BANKRUPTCY VENUE REFORM ACT OF 2019

Background

Approximately one year ago, a bipartisan group of lawmakers in the U.S. House of Representatives introduced the Bankruptcy Venue Reform Act of 2019, H.R. 4421. Under the proposed Act, a corporation can only establish venue in three places. First, the district where its "principal assets" were located for the 180 days before filing. Second, the district where it maintains its "Principal Place of Business." Third, and only for controlled subsidiaries, any district where a case concerning an entity controlling 50 percent or more of its voting stock is pending. Changes of control or in the Principal Place of Business in the year before filing or conducted "for the purpose of establishing venue" would be disregarded. Corporations could thus no longer manufacture venue in a preferred jurisdiction by simply creating an affiliate there (e.g., the Boy Scouts of America case is headquartered in Texas, but filed in Delaware in February after creating an affiliate in Delaware seven months earlier).

Under the proposed bill, in many cases, bankruptcy courts in the company's state of incorporation would not be a proper venue. Changes in a corporation's ownership or its location of principal assets or place of business within one year of a bankruptcy filing would not affect the company's venue choices. For public companies, the principal place of business would be defined to be "the address of the principal executive office of the person or entity as stated in the last annual report filed . . . prior to the commencement of a case . . . , unless another address is shown to be the principal place of business by clear and convincing evidence." Principal assets would not include cash or cash equivalents. A nearly identical measure died in the Senate in 2018 (S. 2282), and substantially similar bills have been regularly introduced for many years, but never became law.

Proponents of the existing rules argue bankruptcy judges in Delaware and New York and other popular venues like Houston are the most experienced and therefore the best equipped to monitor large corporate reorganizations for the benefit of debtors, creditors and other stakeholders.

Critics of the status quo argue that employees of bankrupt companies and smaller creditors can are at a disadvantage if a company files far away from where it operates. Critics also say it perpetuates a perception that corporate bankruptcy is unfair to smaller stakeholders even if the result of a particular case would wind up being the same in the end.

The Congress.Gov website reflects that the bill remains "introduced" in the house, but has picked up eleven co-sponsors over the summer.

2020 Filings

As a result of the coronavirus pandemic, Chapter 11 business bankruptcy filings increased 26% in the first half of this year, according to legal-services firm Epiq Systems Inc. U.S. courts recorded a total of 3,604 businesses filing for chapter 11 protection in the first six months of 2020, up from 2,855 in the first half of 2019 as reported by Epiq based on data from its Aacer business unit. Commercial chapter 11 filings were up 43% last month from June of last year.

The pace of business bankruptcy filings in the U.S. slowed significantly in August from previous months, according to Epiq Systems. A total of 525 businesses filed for chapter 11 protection from creditors in August, down 18% from 642 businesses in July but up 17% from August 2019. In the first eight months of this year, chapter 11 filings rose 28% to about 4,800.

Below is a look – from a venue perspective – of the courts in where the larger (or recognizable) Chapter 11 filings have occurred so far in 2020:

District of Massachusetts - The Paper Store
Middle District of Pennsylvania - Roman Catholic Diocese of Harrisburg
District of New Jersey - Modell's Sporting Goods, Sur La Table
Northern District of Georgia - Krystal (restaurant)
Central District of California – Hytera
Northern District of California – Sizzler USA Franchise
Western District of Michigan - Goodrich Quality Theaters, HopCat
Middle District of Florida - FoodFirst Global Restaurants, Stein Mart
Eastern District of Virginia - J.Crew, Intelsat, Pier 1, Lord & Taylor
District of Colorado - Clean Energy Collective
District of Delaware -24 Hour Fitness Worldwide Inc., Advantage Rent a Car, Akorn, Art Van Furniture, Bakers Square, Bar Louie Restaurants, Borden Dairy, Boy Scouts of America, Brooks Brothers, Boomers! Parks, The Hertz Corporation, Lucky Brand Jeans, Così, CraftWorks Holdings, Dollar Thrifty Automotive Group, Earth Fare, Exide, Fingerhut, GNC, John Varvatos, Libbey Incorporated, Lucky's Market, OneWeb, Le Pain Quotidien, True Religion, USA Rugby, Village Inn, Vivus, XFL (2020), Quorum Health, Energy Alloys Holdings, LLC, Hematite Automotive Parts, Ruby Tuesday, Mallinkrodt
Southern District of Florida – IT'Sugar
Northern District of Texas - Tuesday Morning
Southern District of Texas - Chesapeake Energy, Chuck E. Cheese, J. C. Penney, Stage Stores, Diamond Offshore Drilling, Gold's Gym, Hornbeck Offshore Services, McDermott International, Neiman Marcus, Peter Piper Pizza, Whiting Petroleum Corporation, California Resources, Tailored Brands (Mens Wearhouse), Lonestar Resources, Oasis Petroleum
Southern District of New York - Aeroméxico, Avianca, Avianca Holdings, Frontier Communications, McClatchy, Dean & DeLuca, Fairway Market, LATAM Airlines Group, LSC Communications, Century 21, Martinique Hotel, Diocese of Rockville Centre