
August 20, 2021

Re: H.R. 4193.

Hon. Jerrold Nadler
Chair of the House Committee on the
Judiciary
2132 Rayburn HOB
Washington, DC 20515

Hon. Madeleine Dean
Vice Chair of the House Committee on the
Judiciary
120 Cannon HOB
Washington, DC 20515

Dear Representative Nadler and Representative Dean,

The undersigned Insolvency Law Committee of the Business Law Section of the California Lawyers Association writes to urge you to support H.R. 4193, which proposes reform to the statute governing venue of business bankruptcy reorganization cases to promote the filing of such cases closest to where their creditor body and economic interests tend to be centered.

Under the current bankruptcy venue statute, 28 U.S.C. § 1408, a corporate debtor may select any venue where it is domiciled (*i.e.* incorporated), where its principal place of business is located, where its principal assets are located, or any venue where an affiliate of the corporate debtor can file. This provides any sufficiently large corporate debtor a number of options as to where to file for bankruptcy, especially in courts that have historically construed a liberal definition of these terms. It also allows a corporate debtor to manufacture venue by, for example, creating an affiliate that will also file for bankruptcy and who is incorporated in a chosen venue.

Historically, this has lead corporate debtors across the country to file in Delaware or New York, regardless of whether they have a strong, or any, business presence there. This practice is known as “forum shopping,” and prevents small businesses, employees, retirees, creditors, state and local governments, and other important stakeholders from fully participating in bankruptcy cases that have tremendous impacts on their lives, communities, and local economies. Often this strategy is designed to take advantage of law and procedures that favor certain constituencies over others, most commonly large financial institutions and insiders.

H.R. 4193 recognizes that forum shopping “prevents small businesses, employees, retirees, creditors, and other important stake holders from fully participating in bankruptcy cases that have tremendous impacts on their lives, communities, and local economies.” It does so by revising section 1408 to prohibit entities from filing in any venue except where their corporate

headquarters or principal physical assets are located, and limits any affiliate filing to the venue of the parent company. At the same time it leaves venue selection as to individual debtors largely untouched.

The recent bankruptcy case of PG&E, one of the very few large bankruptcy cases to be filed outside of select Northeastern venues, illustrates the benefits of local venue. In PG&E, the case was venued in the Northern District of California, where PG&E's corporate headquarters was located. This allowed the creditors of PG&E, which constituted not just large corporate investors, but innumerable creditors constituting small business and individual fire victims, to participate in the bankruptcy case. These creditors made regular appearances in the case to ensure that the plan that was ultimately confirmed protected their interests. Had the PG&E been located in a foreign venue, these local companies and fire victims would have had to engage new counsel in a foreign venue. Many of them could not have afforded this and been shut out of the process, as they are in most large corporate bankruptcies filed far from the company's home offices.

Companies themselves may not want to engage in forum shopping, but the decision of where to file bankruptcy is not necessarily made on their own. Instead, the decision can be unduly, if not decisively, influenced by large, financial creditors (like banks) that demand companies file bankruptcy in the forum they want, even if it means imposing significant additional travel and legal costs on smaller creditors, employees, and governmental entities to participate far away from where they did business with the company. More importantly, it has created a large concentration of remote cases where the filing is based solely on the corporate domicile of the company or an affiliate in the bankruptcy courts located in Delaware and, to a lesser extent, the Southern District of New York.

For all these reasons, we support H.R. 4193 and urge you to move it to the House of Representative as a whole. Should you need to discuss this matter, please contact the undersigned at bjk@severson.com or (415) 335-6609.

Thank you for your consideration,



Bernard J. Kornberg

Chair, Legislative Subcommittee of the
Insolvency Law Committee
Business Law Section
California Lawyers Association

CC:

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