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A Chapter 11 Diaspora? House Judiciary Committee Considers Chapter 11 Venue Reform

October 5, 2011 by Stephanie M. Seidl

The House Judiciary Committee recently held a hearing to consider an amendment to the venue provisions of the Bankruptcy Code proposed by the Committee's Chairman that would require corporations to file voluntary chapter 11 petitions in the district where they maintain their principal place of business or have their principal assets. Under the current bankruptcy venue provisions of the U.S. Code, a debtor corporation can file its bankruptcy case in the state where it is incorporated, where it has its principal assets, or where it is headquartered. A corporation can also file a chapter 11 case in a venue where its corporate affiliate's case is already pending. Utilizing these rules, many large chapter 11 cases are commenced in Delaware and New York, despite the fact that the corporate debtor has little ties to those states. For example, Enron – a Texas-based company – filed a bankruptcy for a small New York subsidiary in the Southern District of New York. Shortly thereafter, Enron commenced the bankruptcy case for the main company, and used the venue provisions to bootstrap this case with its New York case, which allowed it to heard along with the subsidiary's case in New York. A more recent example is the Fremont, CA-based Solyndra LLC, which filed a voluntary chapter 11 petition in Delaware, the state of its incorporation.

H.R. 2533, the "Chapter 11 Bankruptcy Venue Reform Act of 2011," is designed to change the venue rules to prevent the type of forum-shopping that occurred in

the Enron case. The bill would amend 28 U.S.C. § 1408 by including the following provisions:

(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.[1]

The amendment effectively prohibits forum-shopping by requiring a debtor to file the bankruptcy case in the district where its principal place of business or principal assets are located. Proponents of the bill argue that chapter 11 debtors should not be able to leave their home districts and shop for a forum whose judicial precedent on bankruptcy law may be the most favorable to them. They further contend that when a large case is filed far away from the debtor's principle place of business, employees, creditors, and the community in which the business operates feel out of touch with the reorganization process, and interested parties frequently have to travel long distances to present evidence to support their claims.

Conversely, opponents of the bill argue that the Delaware and New York bankruptcy courts are remarkably effective at handling complex chapter 11 filings. They also point out that approximately 90% of Chapter 11 cases are filed

where the company has its principal place of business, so the vast majority are filed in the most convenient district.

This bill is currently in the House Committee on the Judiciary, which will continue to deliberate, investigate, and revise the bill prior to any general debate or vote by the House. Stay tuned to http://www.bankruptcylawblog.com/ for further updates on this pending legislation.

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[1] The complete text of the bill is available at http://www.govtrack.us/congress/billtext.xpd?bill=h112-2533.