

Bankruptcy Venue – Here We Go Again!

Written by:
Ed Flynn¹

American Bankruptcy Institute; Alexandria, Va.

Bankruptcy venue is controlled by Section 1408 of Title 28. In general, consumer debtors file in the federal district in which they live. Business debtors often have at least several possible places where they can file, including the state of incorporation, the location of principal assets, or in the district in which an affiliated company has already filed. In actual practice, this has meant that many of the largest business cases have been filed in the Southern District of New York (New York City) and the District of Delaware. In recent years these districts account about two-thirds of filings by large publicly held corporations.

Over the years there have been numerous efforts to amend this Section 1408 to require corporations to file in the district where their principal assets or principal place of doing business is located. The current proposal is contained in H.R. 4421.² This bill has been endorsed by 163 current and former bankruptcy judges³ and 42 state attorneys general.⁴

Proponents of venue reform argue that the current system allows forum-shopping and that cases are now filed in locations that have little connection to the debtor and its' employees and creditors. Opponents of venue reform argue that business debtors should be allowed to choose to file in a district that has the expertise and experience necessary to handle complex reorganizations

Chapter 11 filings are expected to soar in the coming months due to COVID-19. This may prompt closer scrutiny of the venue laws than before. As noted by Professor **Bob Lawless** in a recent **Credit Slips** posting “there have been lots of efforts at venue reform, but this time feels different”.

How many cases could this legislation possibly affect? During the year ended March 31, 2020 there were 6,938 total chapter 11 cases filed nationwide (including cases with multiple related filings). About one in five of these debtors listed an address for their principal place of doing business or location of their principal assets that was outside of the judicial district where they filed. Over 87 percent of these out-of-district cases were filed in Delaware, New York or Texas.

¹ Ed Flynn is a consultant with ABI and serves as a coordinating editor for the *ABI Journal*. He previously worked for more than 30 years at the Executive Office for U.S. Trustees and the Administrative Office of the U.S. Courts.

² See: <https://www.congress.gov/bill/116th-congress/house-bill/4421/text>

³ See: <https://www.creditslips.org/creditslips/Judges%27%20%20Support%20Venue%20Reform%20pdf%20%204.29.2020.pdf>

⁴ See: <https://www.naag.org/assets/redesign/files/sign-on-letter/NAAG%20Support%20Letter%20-%20HR%204421.pdf>

Chapter 11 Cases Filed During the Year Ended March 31, 2020

Circuit	STATE	TOTAL FILED	Debtor Address (Principal Place of Business or Location of Principal Assets)				
			Filing District	Different District in Home State	Different State	Outside United States	Unknown
NATIONAL TOTAL		6,938	5,534	246	1,036	119	3
DC	Washington DC	35	34		1		
1	Maine	14	14				
1	Massachusetts	83	83				
1	New Hampshire	15	15				
1	Rhode Island	6	6				
1	Puerto Rico	93	92			1	
2	Connecticut	32	32				
2	New York	961	744	66	133	18	
2	Vermont	5	5				
3	Delaware	726	5		700	19	2
3	New Jersey	263	248		14	1	
3	Pennsylvania	177	175	2			
4	Maryland	104	104				
4	North Carolina	118	105	8	5		
4	South Carolina	24	23		1		
4	Virginia	87	76	1	10		
4	West Virginia	44	43	1			
5	Louisiana	85	65	19	1		
5	Mississippi	28	28				
5	Texas	1002	715	137	77	73	
6	Kentucky	58	47		11		
6	Michigan	107	96		11		
6	Ohio	152	148	2	2		
6	Tennessee	119	109		10		
7	Illinois	134	134				
7	Indiana	45	45				
7	Wisconsin	35	32	3			
8	Arkansas	30	30				
8	Iowa	12	10	1	1		
8	Minnesota	30	30				
8	Missouri	79	76		2	1	
8	Nebraska	18	18				
8	North Dakota	3	3				
8	South Dakota	4	4				
9	Alaska	10	10				
9	Arizona	155	155				
9	California	651	641	3	5	2	
9	Hawaii	12	12				
9	Idaho	12	12				
9	Montana	15	14		1		
9	Nevada	123	115		8		
9	Oregon	31	26		4		1
9	Washington	109	105	1	3		
10	Colorado	64	63		1		
10	Kansas	59	48		10	1	
10	New Mexico	20	20				
10	Oklahoma	42	41		1		
10	Utah	19	19				
10	Wyoming	7	5		2		
11	Alabama	64	63			1	
11	Florida	581	566	1	13	1	
11	Georgia	236	225	1	9	1	

Source of Data: Administrative Office of the United States Courts, Table F-5A

The prior chart showed which states received additional chapter 11 cases during the year due to the existing chapter venue laws. The following chart compares actual filings in each state with what filings would have been under H.R. 4421. If it had been in effect during the year, 35 states would have received more chapter 11 cases, filings in 11 states would be unchanged, and six states would have lost cases.

Chapter 11 Cases Filed During the Year Ended March 31, 2020				
Circuit	STATE	Actual Filings	Filings With Venue Reform	Caseload Change After Venue Reform
NATIONAL TOTAL		6,938	6,938	0
DC	DC	35	36	1
1	Maine	14	14	0
1	Massachusetts	83	92	9
1	New Hampshire	15	15	0
1	Rhode Island	6	15	9
1	Puerto Rico	93	93	0
2	Connecticut	32	64	32
2	New York	961	853	-108
2	Vermont	5	5	0
3	Delaware	726	34	-692
3	New Jersey	263	267	4
3	Pennsylvania	177	240	63
4	Maryland	104	108	4
4	North Carolina	118	136	18
4	South Carolina	24	35	11
4	Virginia	87	87	0
4	West Virginia	44	46	2
5	Louisiana	85	123	38
5	Mississippi	28	34	6
5	Texas	1002	1071	69
6	Kentucky	58	70	12
6	Michigan	107	124	17
6	Ohio	152	172	20
6	Tennessee	119	133	14
7	Illinois	134	161	27
7	Indiana	45	101	56
7	Wisconsin	35	35	0
8	Arkansas	30	33	3
8	Iowa	12	11	-1
8	Minnesota	30	47	17
8	Missouri	79	98	19
8	Nebraska	18	19	1
8	North Dakota	3	3	0
8	South Dakota	4	4	0
9	Alaska	10	13	3
9	Arizona	155	173	18
9	California	651	760	109
9	Hawaii	12	12	0
9	Idaho	12	14	2
9	Montana	15	14	-1
9	Nevada	123	117	-6
9	Oregon	31	29	-2
9	Washington	109	115	6
10	Colorado	64	163	99
10	Kansas	59	93	34
10	New Mexico	20	21	1
10	Oklahoma	42	49	7
10	Utah	19	19	0
10	Wyoming	7	7	0
11	Alabama	64	67	3
11	Florida	581	638	57
11	Georgia	236	255	19