

Legislative Update

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Venue in Chapter 11 Cases: What Then, What Now, and What Next?



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The current bankruptcy venue statute, 28 U.S.C. § 1408, permits a bankruptcy case to be filed in the district where (1) a debtor is domiciled (*i.e.*, incorporated), (2) a debtor has a residence, (3) a debtor has a principal place of business, (4) a debtor has its principal assets, or (5) there is a pending bankruptcy case concerning the debtor's affiliate, general partner or partnership. These alternative bases for venue have, in practice, allowed some corporate debtors to file cases in jurisdictions where their pre-petition operational footprint was limited or recently established.

Critics have noted that this forum-shopping appears to be concentrated in a few jurisdictions. Empirical studies have shown that a significant percentage of large chapter 11 debtors file outside of the district where their principal place of business or primary operations are located,¹ with debtors frequently choosing venues in the District of Delaware, the Southern District of New York or, more recently, the Southern District of Texas and the District of New Jersey. These trends are not limited to so-called "mega-cases" and have been increasingly extended to middle-market restructurings.

For example, in *In re Winn-Dixie Stores Inc.*,² an affiliate was created in the desired jurisdiction just 12 days before filing. Recent decisions continue to confirm that venue choices that appear disconnected from a debtor's principal operations might nonetheless be statutorily permissible. In *In re LTL Mgmt. LLC*,³ the debtor converted a limited liability company (LLC) formed in Texas into a North Carolina LLC just two days before filing.

In both cases, although those courts ultimately transferred venue, they initially found that venue

was technically proper in the original jurisdictions. These results have prompted courts and commentators to acknowledge the limits of judicial authority absent legislative reform, with critics suggesting that the multiple approaches to establishing venue contained in § 1408 have had the "unintended consequence of allowing abusive forum-shopping."⁴

Early Case Law Addressing Venue Challenges

Winn-Dixie

One of the earlier decisions addressing strategic venue selection was *Winn-Dixie Stores*⁵ in 2005. In this case, a newly formed New York entity filed first, followed by affiliated debtors filing in the same district, notwithstanding that the debtors' preexisting operations were located primarily in Florida and other Southern states. The U.S. Bankruptcy Court in New York found that although venue was technically proper under § 1408, the filing strategy was inconsistent with the statute's underlying purpose and that transfer was warranted in the interests of justice.⁶

Patriot Coal

In *In re Patriot Coal Corp.* from 2012,⁷ Patriot Coal and 98 affiliates — the majority of which were incorporated in Delaware, West Virginia, Virginia and Kentucky, and headquartered in Missouri, and with mining operations in West Virginia and Kentucky — filed for bankruptcy in the Southern District of New York. This was accomplished through the creation of two New York "shell" subsidiaries on the eve of bankruptcy.⁸ These newly formed entities had no employees, no operations and no meaningful assets in New York.⁹

1 "Warren, Cornyn Introduce Bill to Prevent Large Corporations From 'Forum-Shopping' in Bankruptcy Cases," Office of Sen. Elizabeth Warren (Sept. 23, 2021), warren.senate.gov/newsroom/press-releases/warren-cornyn-introduce-bill-to-prevent-large-corporations-from-forum-shopping-in-bankruptcy-cases ("In the last 20 years, more than 70 percent of public companies with at least \$100 million in assets filed for bankruptcy in a district outside of the one closest to their headquarters.") (unless otherwise specified, all links in this article were last visited on April 24, 2026).

2 *Winn-Dixie Stores Inc.*, Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. April 12, 2005).

3 *In re LTL Mgmt. LLC*, 2021 WL 5343945, at *2 (Bankr. W.D.N.C. 2021) ("Venue is proper for a bankruptcy case in any judicial district where the Debtor's domicile, residence, principal place of business ... or principal assets' have been located for 'a longer portion' of the 180 days prior to the petition date. 28 U.S.C. § 1408(1). Venue is proper in this judicial district since the Debtor was a North Carolina entity on the filing date, if only for two days.")

4 "Venue Fairness, Written Statement on Behalf of National Ad Hoc Group of Bankruptcy Practitioners in Support of Venue Fairness," Field Hearing, Jay Westbrook Bankruptcy Conference (Nov. 22, 2013).

5 *Winn-Dixie Stores Inc.*, Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. April 12, 2005).

6 See *Winn-Dixie, Hr'g. Tr.* (April 12, 2005) at 166; see also *In re LTL Mgmt. LLC*, 2021 WL 5343945, at *6 ("Here, the Debtor is trying to manufacture venue and is attempting to outsmart the purpose of the statute. In response to this argument, the Debtor contends that the claimants are forum shopping themselves ... but in this case, the Debtor is not just forum-shopping; the Debtor is manufacturing forum and creating a venue to file [for] bankruptcy. Thus, the purposeful creation of venue, although not dispositive by itself, must be considered in the interest of justice analysis. The more dispositive factor, however, remains that there is a more appropriate venue for the administration of the estate.")

7 482 B.R. 718 (Bankr. S.D.N.Y. 2012).

8 *Id.* at 729 ("With respect to the domicile of the 99 Debtors, 37 were formed in West Virginia while 62 were formed in other states, including 50 in Delaware, five in Virginia, four in Kentucky, two in New York (PCX and Patriot Beaver Dam), and one in Indiana.")

9 *Id.* at 726-27.

Although the court acknowledged that the debtors complied with the literal requirements of § 1408 through the affiliate venue provision, it concluded that the filing strategy conflicted with the statute's intended purpose of promoting convenience and fairness.¹⁰ The court transferred venue to the Eastern District of Missouri, where the debtors maintained their principal place of business and operational center.¹¹

Together, *Winn-Dixie* and *Patriot Coal* reflect an early judicial willingness to scrutinize venue choices that, while technically permissible, appeared disconnected from a debtor's operational reality.

More Recent Developments

More recent decisions underscore the degree to which courts view venue reform as a matter for Congress rather than the judiciary. In *In re Multi-Color Corp.*,¹² Hon. **Michael B. Kaplan** denied motions to transfer venue notwithstanding findings that the debtors had effectively manufactured venue through a recently funded bank account maintained by an affiliate. While observing that the result did not "sit right" with him or even to the parties in interest, Judge Kaplan concluded that § 1408, as written, left no basis to compel transfer absent legislative change.¹³

Similar outcomes have been reached in such cases as *In re Sorrento Therapeutics Inc.*¹⁴ and *In re Sysorex Government Services Inc.*,¹⁵ where venue was sustained based on minimal statutory contacts, including pre-petition professional retainers, bank accounts or recently formed affiliates. These decisions reflect a consistent judicial theme: Where venue complies with the statute's express terms, courts are often reluctant to impose additional limitations through equitable doctrines alone.¹⁶

Proposed Legislative Responses

Congress has considered various proposals aimed at revising the bankruptcy venue statute.¹⁷ The most recent iteration was introduced in March 2026 as the Bankruptcy

Venue Reform Act.¹⁸ The proposal would eliminate venue based solely on state of incorporation and instead limit filings primarily to the district where the debtor maintains its principal place of business or principal assets for a defined period preceding the petition date. It would also significantly restrict the use of affiliate-based venue, preventing debtors from establishing venue through newly formed or minimally connected affiliates, unless the affiliate itself independently qualifies for venue based on operations or assets. By tightening these statutory thresholds, the proposal would shift venue disputes away from a discretionary transfer analysis and instead toward an analysis of threshold eligibility, reflecting a legislative effort to more closely align bankruptcy venue with a debtor's operational and economic center while reducing perceived forum-management.

Reform supporters have argued that these changes would reduce perceived forum concentration and enhance fairness for local stakeholders.¹⁹ Opponents have cautioned that narrowing venue options could increase costs, reduce predictability and dilute the benefits of judicial expertise that have developed in complex restructuring courts.²⁰ Any assessment of venue reform requires balancing competing considerations of equitable access and stakeholder participation on the one hand, and efficiency, expertise and reorganization viability on the other.

Takeaways

Rigid venue rules might harm complex cases where a particular court's expertise and established procedures might genuinely serve a debtor, its creditors, employees and the majority of stakeholder interests. The current venue statute could be modified slightly, both to (1) prevent obvious abuse and (2) permit resort to nonobvious venues in appropriate cases. Specifically, the existing statutory bases of the debtor's domicile, residence, principal place of business, principal assets and affiliates remain, but be subject to a one-year lookback (similar to the current legislative proposal outlined in this article).

The proposed lookback would require consistency during the one-year period for each of those bases of venue instead of a petition date snapshot. Therefore, actions taken just prior to a filing would be insufficient to establish venue. Filing should be permitted in any venue upon a showing by the debtor that such venue serves the best interests of the estate and the majority of stakeholders. Such factors to be considered would include (1) the complexity of the case and the court's expertise with similar matters, (2) the location of principal operations and assets, (3) the location of major creditor constituencies, and (4) the interests of employees,

¹⁰ *Id.* at 742 ("No party disputes that section 1408 of title 28 has been 'satisfied' in these cases; the parties stipulated to this fact prior to the Hearing. By incorporating PCX and Patriot Beaver Dam in New York in the weeks prior to the Petition Date, the Debtors achieved literal and technical compliance with the venue statute and used these entities as a basis for filing all of the Patriot chapter 11 cases in New York. The Debtors argue that this fact is dispositive — and requires that the cases remain in this District, [while] [t]he U.S. Trustee ... also argue[s] that this fact is dispositive — and requires that the cases be transferred to another District. Stated differently, it is the Debtors' position that the eve-of-filing steps taken by the Debtors to satisfy the venue statute should not be considered in the 'interest of justice' analysis. The Court disagrees with the Debtors' [position].").

¹¹ *Id.* at 755.

¹² No. 26-10910 (MBK), 2026 WL 735405 (Bankr. D.N.J. March 16, 2026).

¹³ *Id.* at *6, *17 ("It is not this Court's place to 'close loopholes in legislation.'") (*quoting Patriot Coal Corp.*, 482 B.R. at 745)).

¹⁴ Transcript of Hearing Held on March 11, 2024, Case No. 23-10609 (Bankr. S.D. Tex. 2024) (Dkt. No. 2049); *see also id.* (Dkt. No. 2034) (order denying trustee's motion to transfer venue or dismiss).

¹⁵ Transcript of Hearing Held on May 28, 2025, Case No. 25-10920 (Bankr. S.D.N.Y. 2025) (Dkt. No. 51) (debtor maintained that bank account balance qualifies as asset for venue purposes and acknowledged that U.S. Trustee agreed that \$3,500 held at PNC Bank was asset potentially located in district, but trustee countered that because deposit represented less than 3 percent of debtor's total assets, it could not be considered "principal asset").

¹⁶ *Multi-Color*, 2026 WL 735405 at *5-6 ("Admittedly, the issue before this Court is difficult and none of the parties' suggested interpretations is without flaws... Unless and until there is legislative action, Courts will apply existing case law and the considerations for case transfer under § 1412 — convenience of the parties and the interests of justice — to prevent abuse of the venue statute.').

¹⁷ The 2009 bankruptcy filing of General Motors (GM) in New York, despite its Michigan headquarters, drew criticism leading to the introduction of venue reform legislation. *See In re General Motors Corp.*, Case No. 09-50026 (Bankr. S.D.N.Y. 2009). GM had used the affiliate rule as had *Winn-Dixie* and *Patriot Coal*, and *Multi-Color* would in 2026. *See* "House Holds Hearing on Proposed Chapter 11 Venue Reform Legislation," *XXX ABI Journal* 8, 10, 90-91, 93, October 2011, at 91, abi-journal.com/abstract-5052176 (finding that forum-shopping to Delaware causally prevents closures and liquidations, shortens bankruptcies, boosts creditor recovery and increases post-bankruptcy employment by 24.8 percent).

¹⁸ Text of the Bankruptcy Venue Reform Act, lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/bvra19.pdf.

¹⁹ *See generally* Lynn M. LoPucki, "False Venue Claims Signed Under Penalty of Perjury," 80 *Bus. Law.* 690 (2025) (documenting false-venue claims in large public company bankruptcies and depth to which court competition has undermined venue integrity); *see also* Cliff White, "Bi-Partisan Legislation Aims to Restore Integrity to Corporate Bankruptcy," Creditor Rights Coalition (2026) (arguing that venue loopholes have "swallowed the statute" and disenfranchised smaller creditors).

²⁰ *See* Samuel Antill & Aymeric Bellon, "The Real Effects of Bankruptcy Forum Shopping" (2026), ssrn.com/abstract=5052176 (finding that forum-shopping to Delaware causally prevents closures and liquidations, shortens bankruptcies, boosts creditor recovery and increases post-bankruptcy employment by 24.8 percent).

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retirees and local communities.

This proposal addresses one of the core criticisms of the current law: Debtors unilaterally select venue without meaningful creditor input. In order to file in a nonobvious venue, a debtor would have the burden to satisfy a “best interests” test where it files in a jurisdiction that is otherwise unavailable under other venue provisions.

Conclusion

Bankruptcy case law, both new and old, confirms that sophisticated debtors will use alleged “loopholes” to file their chapter 11 cases in perceived favorable

jurisdictions. The increasing concentration of large chapter 11 cases in a small number of jurisdictions has prompted renewed debate regarding whether statutory reform is warranted. Rigid venue restrictions might risk eliminating the genuine benefits of judicial expertise and sophisticated professional communities that have developed in certain jurisdictions and in certain types of bankruptcy cases. A balanced approach — one that eliminates artificial venue manufacturing and enhances stakeholder voices while taking advantage of, and further developing, judicial expertise — best serves the equitable purposes of the Bankruptcy Code. **abi**

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