



**BUSINESS LAW SECTION
INSOLVENCY LAW COMMITTEE
THE STATE BAR OF CALIFORNIA**

October 26, 2011

To: The Honorable Lamar Smith
Chairman, Committee on the Judiciary
Congress of the United States
House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
Congress of the United States
House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

Re: U.S. House of Representatives Bill No. 2533
(Introduced July 14, 2011)
(Representative Lamar Smith and Co-Sponsors with Representatives Howard Coble,
Steve Cohen and John Conyers, Jr.)

Committee Position:

Supports

Committee Contacts:

Peter C. Califano
Cooper, White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Tel.: 415-433-1900
Fax: 415-433-5530
PCalifano@cwclaw.com

Elissa D. Miller
SulmeyerKupetz
333 South Hope Street, 35th Floor
Los Angeles, CA 90071
Tel.: 213 626 2311
Fax: 213 629 4520
emiller@sulmeyerlaw.com

Statement of Position:

The Insolvency Law Committee of the Business Law Section of the State Bar of California ("ILC") supports United States House of Representatives Bill No. 2533 ("HR 2533") regarding venue reform for the filing of a bankruptcy case.¹

Analysis:

General Comments:

The ILC, a committee of experts in bankruptcy law, supports HR 2533, entitled the "Chapter 11 Bankruptcy Venue Reform Act of 2011."

Reasons for Support of the Bill:

Current law allows a corporate debtor to commence a Chapter 11 bankruptcy case in any jurisdiction where the debtor: a) is domiciled (i.e. incorporated), b) has its principal place of business, or c) its principal assets are located. Over the years, in part due to these permissive venue choices, more and more bankruptcy cases are being filed in courts located far away from the debtor's operational center. The resulting situation often means that many of the debtor's creditors, interested parties and local communities are marginalized and effectively excluded from participating in critical decision-making required to reorganize the debtor's business. HR 2533 addresses this problem.

Most Chapter 11 cases have a mix of large and small creditors, and each creditor must weigh the costs of hiring counsel to travel to a remote venue (or hiring local counsel in the remote venue) against the benefits that are likely to accrue from doing so. For large creditors, the transactional costs are negligible when compared to the amount at stake. For small creditors, the costs are significant, even when the amount at stake for the creditor is meaningful in relation to that creditor's net worth. Usually, the consequences of a corporate bankruptcy are most profoundly felt in the region and community in which the debtor's principal place of business or principal assets are located. Not only is there potential loss of jobs involved, but also the local economy might depend to a large extent on business from that debtor. Many critical issues of local importance may arise. The debtor, for example, may be one of the community's larger employers or it may sustain many small businesses that provide various goods and services. Or the consequences could extend even further, for example, affecting the number of hospital beds that are available, the quality of elder care, or even waste removal. These are just a few of the countless local issues that might be engaged, that need local knowledge, experience and expertise to resolve.

Practitioners understand that bankruptcies filed in remote jurisdictions draw cases away from the parties with the most familiarity with the debtor's operations and who have an important stake in the case's outcome. For example, employees, local vendors and retirees will be unable to attend hearings without incurring insurmountable time and travel expenses. There will also be little

¹ The current version of the bankruptcy venue statute contained in 28 USC § 1408 is attached as Exhibit A. The redline of § 1408, as modified by the provisions of HR 2533, is attached as Exhibit B.

or no local media coverage on the progress of the debtor's efforts to reorganize and the development and interest in local groups and unofficial/official committees will wane.

In-person participation has long been a hallmark of the bankruptcy process. Unlike traditional litigation where the parties are on opposite sides, the interests are more nuanced, part adversarial and part collaborative. Quite often, these interested parties will go down to the local bankruptcy court and meet other similarly-situated parties, share information and develop alliances and informal groups to protect their interests. Ultimately, these efforts lead to negotiations and compromises. These informal groups of similarly situated interests influence the positions of official and unofficial committees in the case, determine whether claims are successfully brought by third parties, or may even have a direct impact on the provisions of the plan of reorganization. This cooperative process tends to lead to a more rapid and cost-effective resolution of the case. However, if the bankruptcy is pending in a remote location, these local interested parties will not be able to take advantage of this type of informal networking and their contributions will be lost or minimized.

Also, the 2008 filing of the LandSource Communities Development Chapter 11 bankruptcy case in Delaware illustrates a further problem with remote filings. LandSource was a land development company with its principal place of business located in Southern California. Its main business involved the "horizontal" development of undeveloped land into sites ready for homebuilding and commercial development. That work involved a wide array of local land use and mechanics' lien issues over such matters as zoning and subdivision map approvals, the clearing of land, installation of utility lines and roads and the building of parks and recreation centers. This is an example of just a few of the countless issues that require local subject matter knowledge and expertise needed to effectively reorganize a debtor's business.

Opponents of HR 2533 claim that current venue rules do not skew the location for bankruptcy filings. However, research shows that over the past 10 years alone, more than 200 major companies have filed for bankruptcy in the Southern District of New York or the District of Delaware even though they had little or no real connection with those districts. One recent high profile case is illustrative of the problem. The Los Angeles Dodgers is a baseball team that plays in Los Angeles during the regular season and Arizona in early spring. None of its games takes place anywhere near Delaware. In fact, no major league team plays in Delaware. Yet Delaware is the place of the Dodgers' Chapter 11 bankruptcy filing. It confounds any common sense to suggest that any significant portion of the Dodgers' creditors, employees, operations or fans are connected to Delaware.

Here is a partial list of recent California-based entities that have filed bankruptcy cases outside of California.

Debtor's Name	Employees before bankruptcy filing	Assets in millions, current dollars	Headquarters city at time of bankruptcy	Headquarters state at time of bankruptcy	City where bankruptcy was filed	Date of bankruptcy filing
DDI Corp.	1,900	271	Anaheim	CA	New York	8/20/2003
Leiner Health Products, Inc. (2002)	3,362	516	Carson	CA	Wilmington	2/28/2002

Debtor's Name	Employees before bankruptcy filing	Assets in millions, current dollars	Headquarters city at time of bankruptcy	Headquarters state at time of bankruptcy	City where bankruptcy was filed	Date of bankruptcy filing
Leiner Health Products, Inc. (2008)	2,538	401	Carson	CA	Wilmington	3/10/2008
WebVan Group, Inc.	4,476	1,938	Foster City	CA	Wilmington	7/13/2008
Gottschalks, Inc.	4,800	355	Fresno	CA	Wilmington	1/14/2009
Hines Horticulture, Inc.	2,100	351	Irvine	CA	Wilmington	8/20/2008
New Century Financial Corporation	7,200	28,584	Irvine	CA	Wilmington	4/2/2007
InSight Health Services Holdings Corp.	2,338	443	Lake Forest	CA	Wilmington	5/29/2007
Audio Visual Services Corp.	2,968	529	Long Beach	CA	New York	12/17/2001
Silicon Graphics, Inc.	2,423	507	Mountain View	CA	New York	5/8/2006
Downey Financial Corp.	2,483	14,265	Newport Beach	CA	Wilmington	11/25/2008
PFF Bancorp, Inc.	885	4,410	Rancho Cucamonga	CA	Wilmington	12/5/2008
Peregrine Systems, Inc.	2,956	665	San Diego	CA	Wilmington	9/22/2002
Sharper Image Corporation	2,500	282	San Francisco	CA	Wilmington	2/19/2008
Globalstar LP	124	580	San Jose	CA	Wilmington	2/15/2002
Calpine Corp.	3,505	31,249	San Jose	CA	New York	12/20/2005
Redback Networks Inc.	596	810	San Jose	CA	Wilmington	11/3/2003
Liberate Technologies	268	367	San Mateo	CA	Wilmington	4/30/2004
Covad Communications	2,300	1,925	Santa Clara	CA	Wilmington	8/7/2001
Exodus Communications, Inc.	4,290	4935	Santa Clara	CA	Wilmington	9/26/2001
Silicon Graphics, Inc. (2009)	1,632	440	Sunnyvale	CA	New York	4/1/2009
Spansion Inc.	9,300	4,054	Sunnyvale	CA	Wilmington	3/1/2009
Wherehouse Entertainment, Inc. (2003)	5,260	285	Torrance	CA	Wilmington	1/21/2003
Cornerstone Propane Partners, L.P.	2,206	1,035	Watsonville	CA	New York	6/3/2004
MTS Inc. d/b/a Tower Records	4,828	578	West Sacramento	CA	Wilmington	2/9/2004

It has been suggested that cases are filed in these two venues because only the Southern District of New York and Delaware are capable of handling larger Chapter 11 cases. However, there are many courts around the country who have jurists and staffs with the understanding, ability

and skill to handle "mega-bankruptcy" cases. For example, in 2001 Pacific Gas & Electric Co. filed in the Northern District of California. This was the largest utility bankruptcy case ever to be filed and resulted in a confirmed plan and a successful reorganized debtor after efficiently administered proceedings.

Finally, opponents also argue that special provisions contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), for first day orders, telephonic hearings and arrangements for *pro hac vice* counsel all together provide adequate protection for trade creditors' and employees' interests. To the contrary, these protections fall considerably short when addressing the bigger overall issue of bankruptcies filed in a remote venue. Clearly, none of these technical protections adequately replace the benefits in having a local bankruptcy court oversee and reorganize a local company.

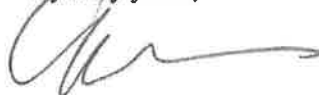
In summary, requiring that a corporate bankruptcy take place locally ensures that the distinct needs of the community are not overlooked or, worse, ignored by other groups residing hundreds, if not thousands, of miles away. The ILC supports HR 2533 because it insures the participation, input and information that local parties can provide to the debtor, other creditors and the courts, and enhances the overall bankruptcy process.

Caveat:

This position is only that of the Insolvency Law Committee of the Business Law Section of the State Bar of California. The position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Business Law Section and Insolvency Law Committee is voluntary and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources.

Very truly yours,



Elissa D. Miller
for the Insolvency Committee

cc: Donna T. Parkinson, Esq.
Chair, Executive Committee, Business Law Section

Mark Weideman
State Bar Section Legislative Representative

Saul Bercovitch
State Bar Legislative Counsel

Ellen A. Friedman, Esq.
Vice-Chair, Legislation, Executive Committee, Business Law Section

EXHIBIT A

Current Version of 28 USC § 1408

§ 1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

EXHIBIT B

Redline of 28 USC § 1408 as modified by HR 2533

§ 1408. Venue of cases under title 11

(a) Except as provided in section 1410 of this title and subsection (b) of this section, a case under title 11 may be commenced in the district court for the district—

_____ (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

(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.