



# CLLA HILL DAY

February 2, 2023

## BANKRUPTCY VENUE REFORM

**Reintroduction of Bills Like H.R. 4193 and S. 2827  
During 118th Congressional Session**

### 1. PROPOSAL

Reintroduction of Bankruptcy Venue Reform Bills in House and Senate based on H.R. 4193 and S. 2827 from the 117th Congress. In June, 2021, Representatives Lofgren (D-CA) and Buck (R-CO) introduced H.R. 4193, followed by S 2827 in September, 2021, by Senators Cornyn (R-TX) and Warren (D-MA). These bipartisan bills required Chapter 11 cases to stay local by requiring corporate debtors to file where they have their principal assets or principal place of business. If passed, and enacted, companies will have to file bankruptcy where they conduct their business. Debtors will no longer be able to unilaterally choose the jurisdiction or the judge they deem friendly. Instead, competent bankruptcy judges assigned randomly would oversee the reorganization of companies that are based in their own communities. Copies of the prior venue reform bills can be found at:

<https://www.congress.gov/117/bills/hr4193/BILLS-117hr4193ih.pdf> and  
<https://www.congress.gov/117/bills/s2827/BILLS-117s2827is.pdf>

### 2. THE PROBLEM

A loophole in 28 U.S.C. §1408 allows companies filing chapter 11 to flee their home states and file bankruptcy in remote jurisdictions, and in some cases, before judges they handpicked. For example, in 2020, three bankruptcy judges, out of a total of 375 judges nationwide, heard 57% of all large commercial cases.<sup>1</sup> The financial and human toll is compelling. *Purdue Pharma, Johnson & Johnson* and *Boy Scouts* manipulated lenient venue rules to file in their courts of choice to stack the deck against their creditor victims. The ability of debtors and their professionals to manipulate laws and choose their own venue to achieve a desired outcome directly threatens the integrity of the bankruptcy system and erodes public confidence. Forum shopping by corporate debtors to obtain desired results has become so prevalent that United States District Court judges are taking notice and openly questioning the integrity of the bankruptcy system.<sup>2</sup> Forum shopping is not limited to large corporate debtors. On September 2, 2022, HJ Dynamic Holdings, LLC<sup>3</sup> and three

<sup>1</sup> Oversight of the Bankruptcy Code, Part 1: Confronting Abuses of the Chapter 11 System: Hearings before the Subcommittee on Antitrust, Commercial, and Administrative Law, of the House Judiciary Committee, 117th Cong. (2021) (written testimony of Adam Levitin): <https://docs.house.gov/meetings/JU/JU05/20210728/113996/HHRG-117-JU05-Wstate-LevitinA-20210728.pdf>. Similarly, a 2015 study by the Government Accountability Office, between 2010 and 2014 found that 71% of large companies (assets and liabilities of \$50 million or more) filed for bankruptcy in two Districts.

<sup>2</sup> Memorandum Opinion of US District Court, *Patterson v. Mahwah Bergen Retail Group (In re Retail Group, Inc.)*, 2022 WL 135398 (E.D. Va. Jan.13, 2022). (Court observed that 91% of large chapter 11 cases filed in only four Districts and in reversing the bankruptcy court's confirmation of a plan with broad third-party releases, judge remanded the matter to a different bankruptcy court and not the one chosen by the debtors)

<sup>3</sup> HJ Dynamic Holdings, LLC, Delaware Case No. 22-10837 (JKS) was confirmed on January 12, 2023.



affiliates filed their Chapter 11 Subchapter V cases in the Bankruptcy Court for the District of Delaware. These companies were headquartered in Davenport, IA. These small bankruptcies dealt with pizza restaurants some of which were company owned and many of which were franchised. Creditors of Subchapter V debtors should not be forced to travel long distances to protect their interests when the debtor files its bankruptcy in a remote state.

The National Association of Attorneys General (NAAG) recognized problems in the current bankruptcy venue laws and in November 2021, issued a comprehensive letter signed by 43 Attorneys General endorsing support for HR 4193 and S 2827.<sup>4</sup> That letter raised serious concerns about corporate debtors increasingly exploiting the generous venue provisions in the Bankruptcy Code, resulting in “unnatural” venue selections in courts with zero connection to the bankrupt companies, and limiting the development of bankruptcy jurisprudence and the adjudication of billions of dollars of liabilities to a handful of judges. The AGs, who are specifically charged with protecting their states' and citizens' legal and financial interests, enforcing consumer protection laws, and protecting the environment from contamination, warned that the rampant forum shopping of bankruptcy cases to distant venues chosen by the debtors is tainting the integrity of the bankruptcy system and breeding widespread distrust of the system.<sup>5</sup>

### **3. THE HUMAN TOLL AND IMPACT OF FORUM SHOPPING**

On February 8, 2022 the Senate Judiciary's Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights held a hearing entitled "*Abusing Chapter 11: Corporate Efforts to Side-Step Accountability through Bankruptcy*".<sup>6</sup> The hearing focused on the use of a divisive merger or “Texas Two-Step” to separate the talc tort claims against *Johnson & Johnson* into a new corporation (*LTL Management*) and then try to use bankruptcy to limit victim claims to the new entity. Members of the Committee observed that the then pending venue reform bills (HR 4193 and S 2827) could provide solutions to these attempts to manipulate the bankruptcy system by allowing courts to consider the propriety of this new tactic instead of judges chosen by the debtors themselves. On January 30, 2023, the Third Circuit dismissed the LTL bankruptcy citing LTL's effort to “manufacture venue” finding that LTL's petition has no valid bankruptcy purpose.<sup>7</sup>

### **4. THE SOLUTION**

For the reasons stated above, the Commercial Law League of America supports bankruptcy venue reform and the passage of bills like H.R. 4193 and S. 2827 that were introduced in the prior Congress. Venue reform has also been supported by the National Association of Attorneys General, United Mine Workers of America, National Association of Credit Managers,

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<sup>4</sup> A map showing the distribution of AGs that supported the 2021 bills is attached.

<sup>5</sup> See, a copy of the NAAG letter at <https://www.naag.org/policy-letter/naag-endorses-bankruptcy-venue-reform-act-of-2021/>

<sup>6</sup> See, <https://www.judiciary.senate.gov/meetings/abusing-chapter-11-corporate-efforts-to-side-step-accountability-through-bankruptcy>

<sup>7</sup> LTL opinion footnote 19 found on page 54 of the 3rd Circuit Opinion..



Iowa Bankers Association, Texas Hotel & Lodging Association, 163 sitting and retired bankruptcy judges, law professors from around the country, and dozens of state and local bar associations.

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