NEGATIVE BRIEF: Bankruptcy Venue Reform Act

The Affirmative plan enacts a bill to restrict the choice of courts by debtors filing for bankruptcy under federal law. Status Quo bankruptcies can be filed in the place of incorporation (e.g. Delaware), even if the company has no business, assets or employees there. AFF will require them to file in a federal court located where they actually do business or have assets. This brief argues that the Status Quo bankruptcy system works fine. Having large numbers of bankruptcies handled in Delaware or New York is actually a good thing because the judges there have a lot of experience and can handle cases quickly and efficiently.

Note: This brief quotes a paper published by the National Conference of Bankruptcy Judges. Evidence from this paper may be cited in both AFF and NEG arguments. It’s obviously a well-qualified source. Their paper presents arguments both for and against this csae and explicitly says at the end that they take no advocacy position on the issue. Don’t raise ethical arguments about quoting against author’s intent, because they present good arguments on both sides and have no intent of advocating for either.

By “Coach Vance” Trefethen

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A party in interest who disagrees with the debtor’s venue selection, or simply believes that another venue is more convenient for the parties, may file a motion to transfer venue of the case to another jurisdiction or, in certain circumstances, to dismiss the case. Specifically, section 1412 of title 28 provides that “[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.” Section 1406 of title 28 provides, in turn, that “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Despite these statutory provisions, relatively few motions to transfer venue or to dismiss cases based on venue are filed. The dearth of venue motions is in stark contrast to the long-running, high-profile debate concerning the utility of the existing venue statute 8

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NEGATIVE: Bankruptcy Venue Reform Act

NEGATIVE PHILOSOPHY / OPENING QUOTES

Venue reform is a solution in search of a problem

[J. Scott Victor](http://www.ssgca.com/Scott_Victor) 2015 (a founding partner and managing director of investment banking firm SSG Capital Advisors LLC and president of the [Turnaround Management Association](https://www.turnaround.org/Default.aspx).) 4 Mar 2015 The Examiners: Venue Reform Is a Solution in Search of a Problem, WALL STREET JOURNAL <http://blogs.wsj.com/bankruptcy/2015/03/04/the-examiners-venue-reform-is-a-solution-in-search-of-a-problem/>

As with most things in life—particularly legislation—if something isn’t broken, then don’t fix it. Venue reform is a solution in search of a problem.

Status Quo bankruptcy system works fine: Venue reform isn’t needed

Prof. David Skeel 2011 (prof. of law at Univ of Pennsylvania Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

What I don't think we ought to be doing is changing the venue rules. What that would do, in my view and from the work that I have done, is undermine a system that works remarkably well. There are some problems with the bankruptcy system, it seems to me, and I think we should be dealing with them. There are problems like the fact that derivatives aren't regulated in bankruptcy. Venue reform doesn't seem to me to be one of those problems.

HARMS

Delaware and N.Y. bankruptcy judges are not corrupt

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The second issue is the claim that the current venue rule has led to a so-called ``race to the bottom.'' The leading academic advocate for reform, Lynn LoPucki of UCLA, has argued that Delaware and New York attract cases by, among other things, paying high fees to bankruptcy lawyers, permitting the debtor's managers to keep their jobs, and simply rubber-stamping the company's proposed reorganization plan or asset sale. Professor LoPucki accuses the bankruptcy judges in Delaware and New York and other judges that have adopted similar practices of being corrupt. I believe that the allegations of corruption are unfounded and deeply unfair.

No evil motives for venue shopping: Companies go to Delaware if the local bankruptcy judge is inexperienced

Prof. David Skeel 2011 (prof. of law at Univ of Pennsylvania Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

In my own work, I have tried to investigate some of Professor LoPucki's claims. What a co-author and I found is that Delaware cases turn out to be much quicker than cases in other districts and that the best predictor of whether a company will file for bankruptcy in Delaware, as opposed to its local court, is how experienced the local court is. If the local court is inexperienced, the company is much more likely to file in Delaware; if the local court is more experienced, the company is much less likely to file for bankruptcy in Delaware.

Forum shopping isn’t bad or unethical

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf> (brackets and ellipses in original)

“[F]orum shopping is a legitimate, expressly authorized action when more than one forum satisfies the requisite legal criteria,” and “the hostility toward forum shopping is based on numerous flawed underlying assumptions.” In non-bankruptcy litigation, “[n]ot only do venue options provided by procedural rules allow forum shopping, but the structure of the judicial system provides incentives to shop for a forum.” Federal and state legislatures have given litigants choices of fora and courts have recognized the legitimacy of litigants seeking the most favorable venue for their clients. “In light of the potential venue choices provided to litigants under the American judicial system and the governing laws, we should not be surprised or dismayed at the fact that forum shopping has thrived.” Furthermore, the “ethical rules require attorneys to use rules and procedures to the fullest benefit of their clients. . . . Expecting attorneys to ignore their clients’ best interests by failing to select a favorable venue when it is available is asking attorneys to commit malpractice.”

Small creditors aren’t harmed: They don’t want to be involved in the process and there isn’t much they can do anyway

Prof. David Skeel 2011 (prof. of law at Univ of Pennsylvania Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

It is also important, it seems to me, to be realistic about the extent to which small creditors really want to participate in these big bankruptcy cases. Most small creditors don't want to be actively involved. It takes time and often money. And those who do are often very frustrated that there isn't more they can do, even if they can appear in court, to affect the outcome as an individual creditor.

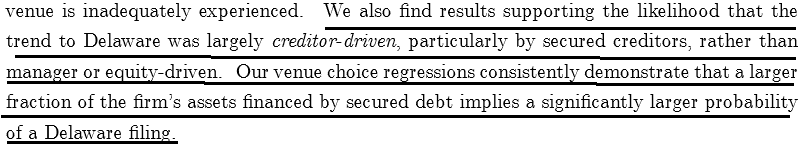
Small creditors and employees don’t care about local venue: They don’t attend bankruptcy hearings anyway

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

Venue change proponents also argue that public confidence will be enhanced if employees and local creditors can better keep abreast of developments by attending bankruptcy hearings, which they contend can only be assured if companies are required to file in the district of their headquarters. However, 100 employees and small creditors rarely attend bankruptcy hearings, even if held at their local courthouse.

Delaware venue doesn’t harm creditors. Turn: it’s actually better for them and they are more likely to prefer it

Prof. Kenneth Ayotte and Prof David Skeel 2004 (Ayotte – Columbia Business School. Skeel – U. of Penn. Law School) 18 Oct 2004 “Why Do Distressed Companies Choose Delaware? An Empirical Analysis of Venue Choice in Bankruptcy” <https://scholarship.law.upenn.edu/faculty_scholarship/20/>



Venue shopping isn’t harming small creditors

J. Scott Victor 2015. (a founding partner and managing director of investment banking firm SSG Capital Advisors LLC and president of the Turnaround Management Association.) 4 Mar 2015 The Examiners: Venue Reform Is a Solution in Search of a Problem, WALL STREET JOURNAL <http://blogs.wsj.com/bankruptcy/2015/03/04/the-examiners-venue-reform-is-a-solution-in-search-of-a-problem/>

Commentaries and proposed legislative changes over the years that have criticized the venue provision of the bankruptcy code as creating a haven for forum shopping are simply wrong. To argue that the convenience of creditors and other parties such as employees are in any way prejudiced by a debtor’s choice of venue is misguided. There are outstanding insolvency professionals across the country, and bankruptcy courts in all states and territories are more than happy to hear them.

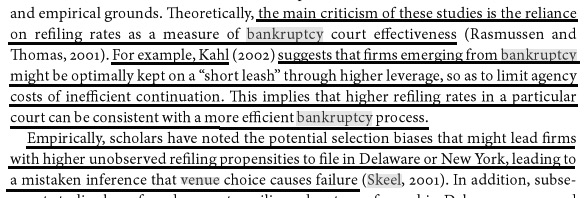
Convenience of venue isn’t a problem in status quo

Prof. David Skeel 2011 (prof. of law at Univ of Pennsylvania Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

The final issue is convenience for small creditors. Critics of Delaware and New York argue that it is much harder to attend a hearing in Delaware or New York than it would be to attend hearings in the company's principal place of business. In reality, the vast majority of Chapter 11 cases--and this is about 90 percent. My math isn't great but I don't think this is too far off--are filed in the district where the company has its principal place of business. And even with the largest cases, only half of them, end up in Delaware or New York. And these cases, whatever you think of convenience, you are going to get that convenience. The headquarters, principal place of business, and State of incorporation are all going to be in one State--in one district. Many of the debtors that do file for bankruptcy in Delaware or New York are far-flung companies for which there is no single location that would be convenient for most of the creditors.

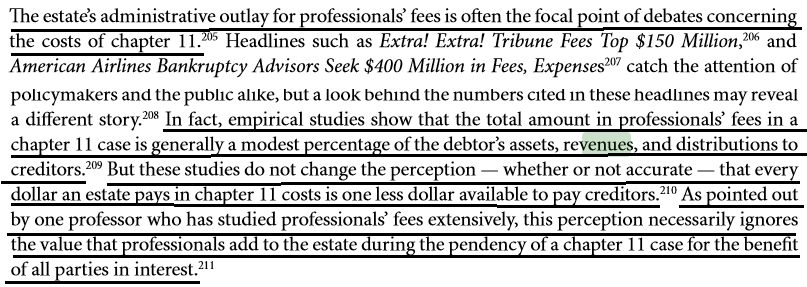
Delaware venue choice doesn’t lead to higher bankruptcy failure rates – there are other factors involved

Kenneth Ayotte, Edith Hotchkiss and Karin Thorburn 2013. (Ayotte – Northwestern Univ. School of Law. Hotchkiss – Carroll School of Management, Boston College. Thorburn – Dept of Finance and Management Science, Norwegian School of Economics) THE OXFORD HANDBOOK OF CORPORATE GOVERNANCE, Chap. 22 “Governance in Financial Distress and Bankruptcy” <https://books.google.fr/books?id=RnsUZlwgXEQC&pg=PA504&lpg=PA504&dq=skeel+bankruptcy+venue&source=bl&ots=vd6lHtqoFL&sig=TRRVDEXVTd6iOGTQvUHTxH54ros&hl=en&sa=X&ei=bYehVfL7EMf1UIn6paAM&ved=0CDYQ6AEwAzgU#v=onepage&q=skeel%20bankruptcy%20venue&f=false>



Attorney fees in bankruptcy cases are not excessive

American Bankruptcy Institute 2014. (multi-disciplinary, nonpartisan organization devoted to the advancement of jurisprudence related to problems of insolvency; includes more than 13,000 attorneys, bankers, judges, accountants, professors, turnaround specialists and other bankruptcy professionals, providing a forum for the exchange of ideas and information) ABI Commission to Study the Reform of Chapter 11 <http://business-finance-restructuring.weil.com/wp-content/uploads/2014/12/Ch11CommissionReport.pdf>



INHERENCY

No big concentration of cases in a few courts and even if there were, they can easily transfer them

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

Restricting long-available venue options is not wise. First, the purported problems caused by existing venue choices are not supported by the facts. Statistics of chapter 11 filings do not support the assertions that extraordinary numbers of small, medium, large and even “mega” chapter 11 cases are being skewed to a limited number of courts.202 In addition, statistics show that bankruptcy courts readily transfer venue where warranted.

Most bankruptcies are NOT filed in the so-called “magnet courts” (Delaware, Southern District of NY, and Southern District of Tex.)

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Proponents of venue change assert that allowing the state of incorporation as a venue option results in too many big and medium-sized corporate chapter 11 cases being filed in “remote” venues, far from the debtor’s headquarters and many of its stakeholders. This argument is not supported by the evidence. Commentators observe that “the venue debate is mostly about where mega-sized bankruptcy cases should be prosecuted. The debate pays little attention to small or medium-sized business enterprises, which account for more than 90% of all business bankruptcy cases filed each year.” If one considers all chapter 11 business bankruptcy cases filed in 2017, for example: 66 10.7% filed in Delaware, 8.7% filed in the Southern District of New York, and 8.4% filed in the Southern District of Texas; almost 73% filed elsewhere. Thus, the alleged “problem” with the bankruptcy venue statute is not even an issue for most chapter 11 business debtors.

Even among big corporations, most don’t file in the “magnet” courts

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Even if one considers only filings by large entities (with assets or liabilities over $50 million), 2,527 bankruptcy cases were filed between January 1, 2005, and May 8, 2018, under chapter 11 or 15. More than half of those cases (1,536) were not filed in Delaware or New York. Of the 1,369 companies eligible to file in Delaware because they were incorporated there, less than half (639) did. Notably, venue choice for the largest corporate debtors is even more diverse. A recent report by a law firm active in large corporate bankruptcy cases notes that the ten largest chapter 11 cases filed in 2017 were venued as follows: 3 in the Southern District of New York, 3 in the Southern District of Texas, 2 in the District of Delaware, 1 in the Eastern District of Virginia, and 1 in the Eastern District of Louisiana. A similar spectrum of venue choices applied for the ten largest chapter 11 cases filed in 2016. In reality, then, the alleged “problem” is hard to see: even among the largest corporate debtors, only a minority avail themselves of the option to file where they are incorporated.

They can always file for a transfer out of Delaware – but they don’t because the status quo works fine

Christopher Ward 2015. (Delaware bankruptcy attorney) 27 Feb 2015 [Does the Bankruptcy Code Need a Venue Rule Reform?](http://blogs.wsj.com/bankruptcy/2015/02/26/does-the-bankruptcy-code-need-a-venue-rule-reform/) <https://blogs.wsj.com/bankruptcy/2015/02/26/does-the-bankruptcy-code-need-a-venue-rule-reform/>

Another little known fact is that the Delaware courts, by example, have actually transferred a good portion of cases where a motion to transfer venue was actually filed. The problem is that most parties do not file motions to transfer venue. Why is that? Because the system works. People gripe about having to retain Delaware counsel, but they are a cog in the system that keeps the machine running smoothly.

Motion to transfer venue solves in Status Quo if the creditors are not satisfied

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A change to the venue statute is unnecessary, moreover, because parties (including employees and small creditors) already have the option of moving to transfer venue of the bankruptcy case (or an adversary proceeding or contested matter) to another forum. A court, “on timely motion of a party in interest or on its own motion,” may transfer any bankruptcy case or adversary proceeding if it is “in the interest of justice or for the convenience of the parties.” This applies to cases filed in the proper venue as well as to cases filed in an improper venue.

A/T “Transfer is too difficult/expensive or doesn’t work” – No study proves this, and transfers are granted more often than not

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Proponents of venue change typically resort to nonevidencebased arguments in an effort to marginalize the perceived effectiveness of motions to transfer venue. For example, one advocate for upending the current bankruptcy venue system asserts that for most creditors, seeking to transfer venue of a bankruptcy case “is just too much trouble and too expensive, and the creditor is forced to bear the burden of this cost without recompense, much less prospects for ultimate success.” Such sweeping statements wither under close scrutiny. First, there is no empirical study of motions to transfer venue of bankruptcy cases which supports those conclusions. In fact, motions to transfer venue are granted more often than not.

A/T “Transfer is too difficult” – 2/3 of the request are granted

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For example, the Delaware bankruptcy court granted over two-thirds of the venue transfer motions it has heard in chapter 11 bankruptcy cases since 2001. During that period, forty-three motions to transfer venue were adjudicated. Twenty-nine, or 67.4%, of those motions were granted.

If venue is such a big problem, why do the parties involved hardly ever file for transfer of venue?

American Bankruptcy Institute 2014. (multi-disciplinary, nonpartisan organization devoted to the advancement of jurisprudence related to problems of insolvency; includes more than 13,000 attorneys, bankers, judges, accountants, professors, turnaround specialists and other bankruptcy professionals) ABI Commission to Study the Reform of Chapter 11 <http://business-finance-restructuring.weil.com/wp-content/uploads/2014/12/Ch11CommissionReport.pdf>

A party in interest who disagrees with the debtor’s venue selection, or simply believes that another venue is more convenient for the parties, may file a motion to transfer venue of the case to another jurisdiction or, in certain circumstances, to dismiss the case. Specifically, section 1412 of title 28 provides that “[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.” Section 1406 of title 28 provides, in turn, that “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Despite these statutory provisions, relatively few motions to transfer venue or to dismiss cases based on venue are filed. The dearth of venue motions is in stark contrast to the long-running, high-profile debate concerning the utility of the existing venue statute

Video and teleconference can solve for remote distance bankruptcy inconvenience

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I do think that convenience is very important, but I think there are much better ways to deal with the convenience concern. Video and telephone hearings have become much more common than they were in the past, and they are going to continue to become more common.

SOLVENCY

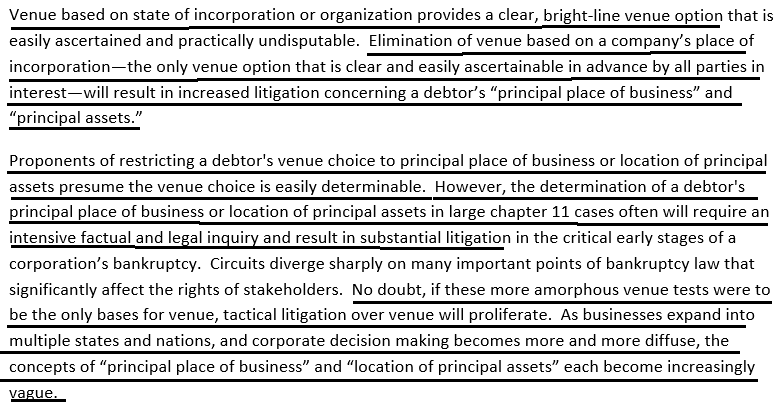
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Today’s large businesses often have more than one headquarters or location of major assets (indeed, they seldom consist of just one debtor but usually comprise a number of affiliated companies) with farflung assets some of which – intellectual property, accounts receivable, and litigation claims - do not even have a physical location. In the early stages of large chapter 11 cases, too much of primary importance needs to occur without the addition of complex, fact-based venue litigation. In addition, creditors of large debtors are usually equally widespread, such that no venue choice will be near most creditors who wish to participate in the case.

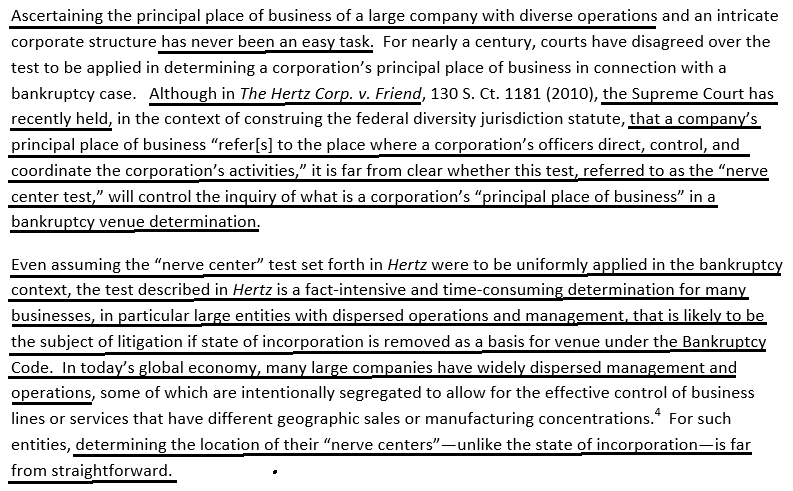
Requiring “principal place of business” is too vague and confusing, would result in endless litigation over its meaning

James L. Patton 2013 (bankruptcy attorney) 22 Nov 2013 Statement to the ABI Commission to Study Reform of Chapter 11 <http://commission.abi.org/sites/default/files/statements/22nov2013/James-Patton-Testimony.pdf>



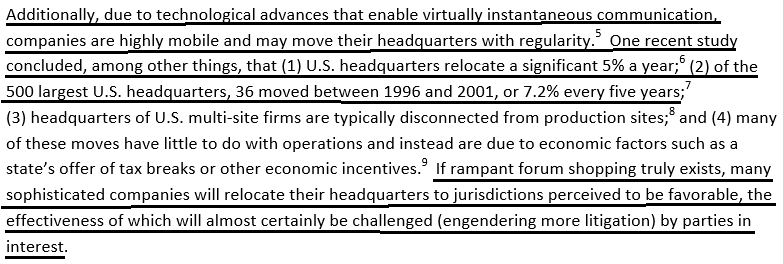
Even with the Supreme Court’s definition in the Hertz case, it could still be contentious determining where a large company’s center of operations is

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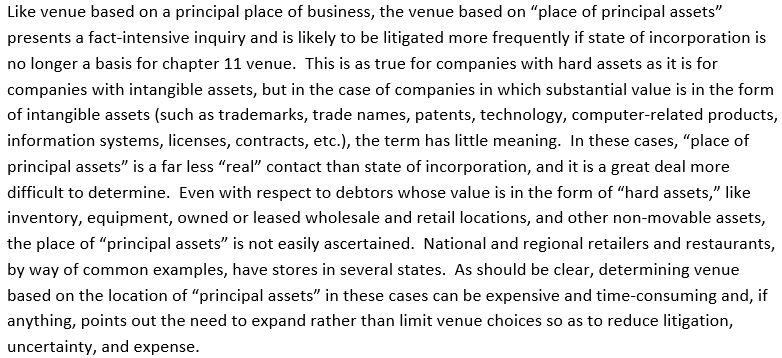
Company Headquarters standard won’t stop bankruptcy forum shopping: They’ll just move the headquarters

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“Place of principal assets” venue test won’t work. We should be expanding venue choices, not restricting them

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DISADVANTAGES

1. Specialized Expertise

Link: N.Y. has bankruptcy court with specialized expertise in tough cases

Prof. David Skeel 2011 (prof. of law at Univ of Pennsylvania Law School) 8 Sept 2011 HEARING BEFORE THE SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ONE HUNDRED TWELFTH CONGRESS FIRST SESSION ON H.R. 2533 <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68185/html/CHRG-112hhrg68185.htm>

New York has developed the administrative capacity and expertise to handle the very largest cases, the cases that are seen as too big for Delaware or other districts. The idea that it makes sense to have courts with special expertise dealing with particularly complex cases is widespread in American law. The new Dodd-Frank Act resolution rules, to give just one example of this, is based on precisely this principle, that we ought to put in a specialized court cases that are very large and very complicated.

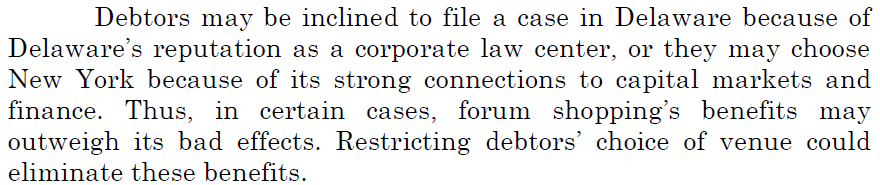
Link & Impact: “Magnet” courts have more experience that expedites proceedings and improves debtor’s ability to reorganize

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf> (ellipses in original; brackets added)

While the current magnet courts have well-defined procedures assuring that first day motions will be heard and decided promptly, other courts do not - instead addressing the need for emergency relief on an ad hoc basis.   
 [quoting bankruptcy attorney Harvey R. Miller:] A bankruptcy court that is not familiar with the problems inherent in large, complex Chapter 11 cases might delay or otherwise defer the resolution of initial proceedings without realizing the negative impact of this delay on the ability to stabilize the debtor. . . . A court’s lack of experience in dealing with the disposition of a debtor’s initial needs may irrevocably impair the debtor’s ability to reorganize.

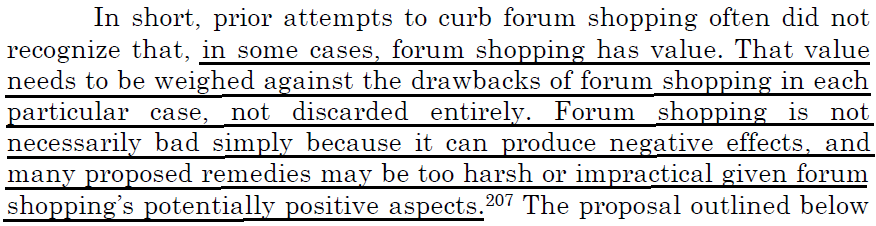
Impact: Net benefits. Benefits of forum shopping exceed bad effects in some cases

Prof. Laura Napoli Coordes 2015 (Visiting Assistant Professor, Sandra Day O'Connor College of Law, Arizona State University. J.D., University of Chicago Law School ) VANDERBILT LAW REVIEW “ The Geography of Bankruptcy” <https://www.vanderbiltlawreview.org/wp-content/uploads/sites/89/2015/03/The-Geography-of-Bankruptcy.pdf>



Impact: Net Benefits. Banning forum shopping goes too far, eliminates too many of the benefits

Prof. Laura Napoli Coordes 2015 (Visiting Assistant Professor, Sandra Day O'Connor College of Law, Arizona State University. J.D., University of Chicago Law School ) VANDERBILT LAW REVIEW “ The Geography of Bankruptcy” <https://www.vanderbiltlawreview.org/wp-content/uploads/sites/89/2015/03/The-Geography-of-Bankruptcy.pdf>



Impact: Hurts creditors. Reduces their chances for maximum recovery when less experienced courts handle the cases

Joseph DiStefano 2011 (journalst) 27 Sept 2011 Lawyer wars: US attack on Delaware bankruptcy haven <http://www.philly.com/philly/blogs/inq-phillydeals/Lawyer-wars-US-attack-on-Delaware-bankruptcy-haven.html>

"Removing the state of incorporation from the definition of 'venue' would only hurt creditors' chances at a maximum recovery," warns Ted Gavin, principal at NHB Advisers, a Wilmington "turnaround and crisis management expert" that serves bankruptcy clients. "Delaware has developed very sophisticated corpoate law" and "expert courts (that) allow quicker results that are best for all parties."

2. Inconsistent outcomes

Link: Judges in other forums (outside Delaware and New York) are unpredictable, like a monkey with a machine gun

Mark Curriden 2012 (J.D. (law degree), legal journalist) ABA JOURNAL (publication of the American Bar Association) 1 Mar 2012 Playing on Home Court: New York and Delaware May Lose Their Grip on Bankruptcy Cases <http://www.abajournal.com/magazine/article/playing_on_home_court_new_york_and_delaware_may_lose_their_grip_on_bankrupt/>

In contrast to the perceived pro-debtor predictability of the Delaware and New York courts, bankruptcy judges in other parts of the country developed a different reputation. For example, former long-serving Dallas bankruptcy judge Harold Abramson prided himself on being unpredictable. Judge Abramson, who was on the bench for nearly two decades, once described himself in court as “a monkey with a machine gun.” Lawyers say that cities across the country have similar stories about bankruptcy judges in their jurisdictions.

Link: Delaware has much better consistency standards than other bankruptcy courts

Rafael X. Zahralddin-Aravena & Shelley A. Kinsella 2012. (both are bankruptcy attorneys) 26 Mar 2012 Delaware and Business Insolvency <http://www.corporatelivewire.com/top-story.html?id=delaware-and-business-insolvency>

A criticism of many other jurisdictions outside of Delaware is that the judges have varied judicial Chambers procedures and the local rules are limited in scope or out of touch with the practice as it evolves. The Delaware Bankruptcy judges have all agreed to use a uniform set of chambers procedures with some few small exceptions dealing with limited elements of trial practice. These, and other permanent procedural rules, are located conveniently, and updated often, on the website for the Bankruptcy Court. The bar and the court also moved to incorporate several standing orders and existing local practice into one set of local rules about a decade ago. Many Courts in other jurisdictions do not have uniform rules that govern case procedures, which results in disjointed case by case procedural orders. Delaware sets the standard in this respect, with a vibrant set of local rules that cover the depth of most procedural issues and having a local rules committee that is not limited to Delaware Judges and lawyers, but also includes prominent and frequent practitioners who often practice in Delaware.

Link: Delaware bankruptcy judges are experienced and consistent

Larry Nagengast 2009 (journalist) DELAWARE BUSINESS, Boom for Bankruptcy Law, May/June 2009 <http://www.bayardlaw.com/wp-content/uploads/2012/05/Marketing._Article_Boom_for_Bankruptcy_01312686.pdf>

Delaware’s U.S. Bankruptcy Court, whose bench expanded from two judges to six in March 2006, has a reputation for efficiency and consistency. “Our bankruptcy judges are experienced, consistent, pragmatic and generous with their time,” says Jeffrey Wisler, chair of the Bankruptcy Section in the Business Law Group at Connolly Bove Lodge & Hutz LLP in Wilmington.

Impact: Legal predictability and consistency are key to justice and avoiding wasted money on useless litigation

Ted Frank 2007 (J.D. from Univ of Chicago Law School, former director and fellow of the Legal Center for the Public Interest at American Enterprise Institute) <http://overlawyered.com/2007/06/the-rule-of-law-why-is-predictability-important/>

Of course, predictability—that like cases are treated alike—is a fundamental component of the definition of justice. The social benefits of the rule of law are so obvious that it should hardly be necessary to list them, but, aside from issues of fundamental fairness enshrined in our Constitution in the *ex post facto* clause among other places, predictability has other advantages. If a result is predictable, settlement is easier: there’s little point in continuing to litigate on either side, because additional money spent on lawyers cannot change the result. If a result is predictable, one can more easily conform conduct to be law-abiding. Corporations aren’t incentivized to break contracts with one another to see whether they can get a better deal in the courts; individuals and corporations know where the line is in dealing with the public and won’t step over it.

Impact: Benefits of Status Quo predictability justify Status Quo policy

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

Companies entering chapter 11 are 64 fragile. They and their various constituents – lenders, vendors, employees, retirees, and other creditors and parties in interest – value the predictability, consistency and efficiency of courts which have been proven over time to administer such cases successfully. Options to file chapter 11 cases with such courts (which do not remain static but, rather, change as the courts’ composition and guiding law change) therefore should be maintained, not restricted.

Impact: Added costs.

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

Where courts have overseen many large cases, decisional law on many recurrent issues is well-developed. As a result, parties can assess what will happen with greater precision, thus saving time and money (to the benefit of all stakeholders in the case) by avoiding the roll of the dice in litigation. The magnet courts have developed consistent and far-reaching precedents, which may account for the penchant of some parties to file large corporate cases there.

3. Too slow. Delaware and N.Y. do bankruptcy cases faster. We lose that if we deny them as preferred venues

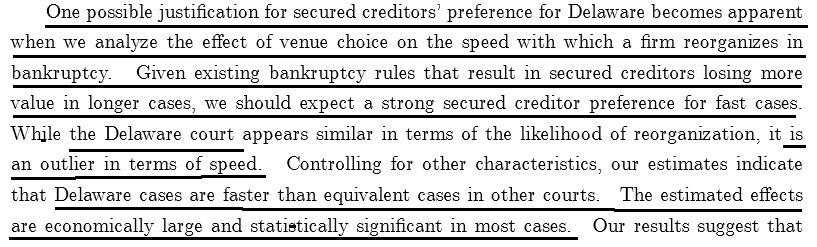
Link & Impact 1. NY & Delaware can move fast enough to save troubled companies, making the difference between failure and survival

Bobby Guy 2011 (attorney with law firm Frost Brown Todd LLC) “Choosing a Venue in Chapter 11 Cases: A Practical View “18 Jan 2011 <https://topslide.net/view-doc.html?utm_source=choosing-a-venue-in-chapter-11-cases-a-practical-view>

Filers should be wary of courts that do not have reasonably good and responsive first-day procedures. Nothing is worse than filing a Chapter 11 and not getting a first-day hearing for weeks or even months -- one West Coast company shut down several years ago after being forced to wait 10 days for a first-day hearing. Companies need to have first-day hearings promptly so that they can access cash, pay employees, continue centralized cash management and pay essential suppliers. Poor first-day hearing procedures can also signal a more general lack of responsiveness, a major stumbling block for operating companies in Chapter 11, which often need to schedule emergency or expedited hearings. Delaware and the Southern District of New York have led the way on first-day responsiveness and many other courts, such as the Southern District of Texas, have followed suit by adopting similar local rules and procedures.

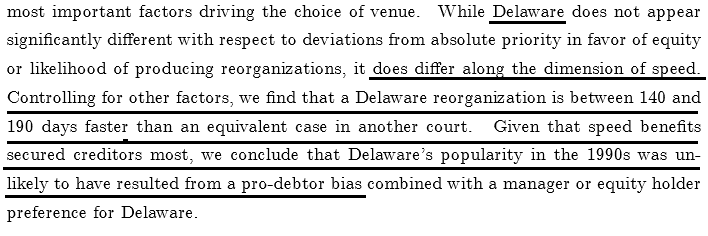
Impact 2. Significant economic impacts on large creditors (they’re waiting to collect on their debt, so the faster things move, the faster they get paid)

Prof. Kenneth Ayotte and Prof David Skeel 2004 (Ayotte – Columbia Business School. Skeel – U. of Penn. Law School) 18 Oct 2004 “Why Do Distressed Companies Choose Delaware? An Empirical Analysis of Venue Choice in Bankruptcy” <https://scholarship.law.upenn.edu/faculty_scholarship/20/>



Impact 2. Creditors harmed. Speedy resolution benefits secured creditors, and Delaware is faster

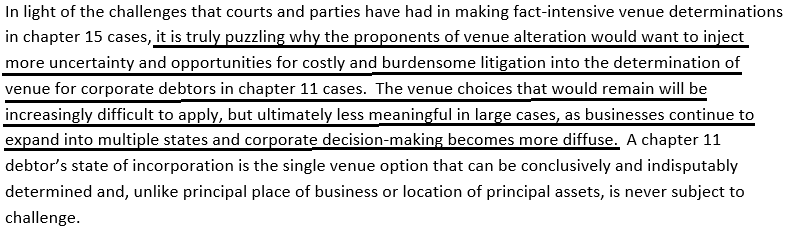
Prof. Kenneth Ayotte and Prof David Skeel 2004 (Ayotte – Columbia Business School. Skeel – U. of Penn. Law School) 18 Oct 2004 “Why Do Distressed Companies Choose Delaware? An Empirical Analysis of Venue Choice in Bankruptcy” <https://scholarship.law.upenn.edu/faculty_scholarship/20/>



4. Excess venue litigation

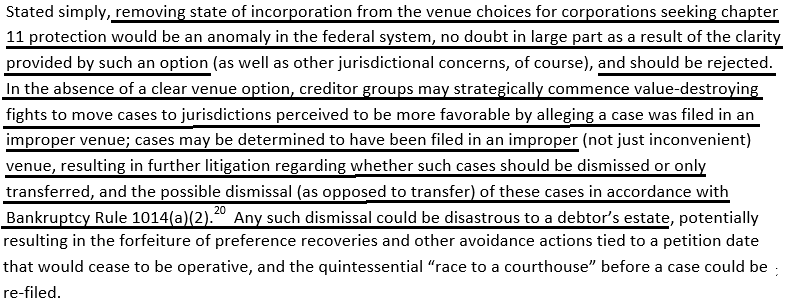
Link: Place of incorporation is simple and clear. Removing it as a venue leads to costly legal fights over alternative venues

James L. Patton 2013 (bankruptcy attorney) 22 Nov 2013 Statement to the ABI Commission to Study Reform of Chapter 11 <http://commission.abi.org/sites/default/files/statements/22nov2013/James-Patton-Testimony.pdf>



Impact: Excess venue litigation will be disastrous to the debtor’s estate

James L. Patton 2013 (bankruptcy attorney) 22 Nov 2013 Statement to the ABI Commission to Study Reform of Chapter 11 <http://commission.abi.org/sites/default/files/statements/22nov2013/James-Patton-Testimony.pdf>



5. Lost businesses and jobs

Eliminating “forum shopping” will cause more business failures and lost jobs

National Conference of Bankruptcy Judges 2018. (voluntary association of United States Bankruptcy Judges, comprised of approximately 82% of the nation’s active and recalled bankruptcy judges) NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases 27 Nov 2018 <https://cdn.ymaws.com/www.ncbj.org/resource/resmgr/docs_public/Venue_White_Paper_-_Final.pdf>

Even proponents of restricting venue choice in the bankruptcy context concede that “the Supreme Court has repeatedly recognized the value of some types of forum shopping” and acknowledge that “in certain cases, forum shopping’s benefits may outweigh its bad effects.” In bankruptcy cases, the ultimate goal of a debtor in determining where to file is to “select the forum that best enables a debtor to successfully reorganize its business, thereby preserving jobs and value for the benefit of the debtor’s employees, its creditors, and all parties in interest.” This goal is a central purpose of the Bankruptcy Code.

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