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PERSPECTIVE

It's time for Congress to address bankruptcy venue

By **Brian Davidoff**, **Elissa Miller**
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What do the Dodgers, American Apparel, Rubio's Fish Tacos, California Pizza Kitchen, MGM Studios and Pacific Sunwear have in common? Each is an iconic Southern California brand. But that's not all they have in common. These companies are members of a growing list of California companies that strategically elected to file for bankruptcy *outside* of California. By filing for bankruptcy in faraway states, they deprived local employees, vendors and creditors from participating in the bankruptcy process.

Why do California companies, when they file for bankruptcy, file in distant locales like New York, Delaware, Virginia and Texas? After all, most of the people affected by the bankruptcy case are in California. The reason is that they can under the current bankruptcy venue law.

Current law allows a company to file a bankruptcy case in any state where it does business, or where it or an affiliate is incorporated. Thus, for purposes of deciding where to file bankruptcy, it did not matter that the Dodgers are in Los Angeles or that MGM is one of the oldest Los Angeles studios. The fact that these companies (or tiny corporate affiliates) filed corporate documents in another state, such as Delaware or New York, allowed them to file for bankruptcy there.

Corporate debtors select these distant venues for several strategic reasons — i.e., forum shopping. First, the favored courts are known for “predictability,” because there are few judges in these courts. Second, these courts are known to have “rocket dockets,” i.e., the judges move the cases very quickly, often giving affected parties limited opportunity to be heard. Third, these courts are known to tolerate high attorney billing rates of large law firms, even when most creditors receive minimal returns. Finally, these courts are generally receptive to legal arguments of banks and other sophisticated parties who often control the case. Little opportunity and voice are given to employees and local business creditors who cannot easily appear in a case, and afford counsel, thousands of miles away. The process is particularly

helpful for companies and their lenders looking to exit bankruptcy quickly.

A distressing result of California companies' forum shopping is that out-of-state judges decide how thousands of California creditors, employees, regulators and customers are treated, when California-based judges may be more concerned with protecting California citizens. For example, as recently reported by the Los Angeles Times, a bankruptcy court allowed Exide Technologies to abandon its Vernon battery plant, absolving Exide of responsibility for the environmental disaster it wreaked

the Dodgers filed their case in Delaware based on the state of incorporation.

Applying general venue rules in bankruptcy makes sense as a matter of due process. People who are affected by a business bankruptcy should be able to personally participate in the process — not be forced to pay attorneys to represent their interests far from home. California state and local governments enforcing environmental and employment laws, or collecting revenues, should not be forced to jump through extra hurdles to protect our rights in distant venues. California bankruptcy

by Zoe Lofgren of California (D) and James Sensenbrenner of Wisconsin (R) proposes to fix venue laws. The proposed law would require companies to file for bankruptcy in the location of their principal assets or place of business. While the bi-partisan issue of venue reform has been around for many years, there is a new urgency. Experts predict an avalanche of mega cases due to the pandemic-induced recession. Just last month, Rubio's Fish Tacos filed in Delaware and, in July 2020, California Pizza Kitchen filed in Texas. We are already witnessing the mega bankruptcy cases of major retailers, travel businesses, and restaurants. And, although not COVID-related, Purdue Pharma strategically filed its case involving billions of dollars of liabilities for its criminal misconduct relating to the opioid crisis, across state lines from its headquarters in Stamford, Connecticut, in a one-judge White Plains, New York bankruptcy court.

It is only a matter of time before the next California company files its bankruptcy case across the country. This is wrong. When filing bankruptcy petitions, businesses should file in their home state. This is a bi-partisan issue that every California congressional representative should support. There is no reason why our citizens should be deprived of due process, why our districts should lose revenues, and why judges on the other side of the country should be deciding the economic fate, indeed the health and welfare, of Californians. ■

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and leaving the cleanup burden on California taxpayers. Who made this decision? The Delaware bankruptcy court, 3,000 miles away.

That companies can file bankruptcy cases in jurisdictions far from their home base is inconsistent with how venue is usually determined. If a business dispute or personal injury case is based on events in California, the lawsuit would be filed in in the California county or district where it all happened. The same should be true for bankruptcy. Since most of the Dodgers' business was in Los Angeles, the bankruptcy case should have been in Los Angeles. Yet,

judges should have the opportunity to develop the law governing large corporate bankruptcies in California. The citizens of California should benefit from the same ease of access to the courts that the citizens of Delaware and New York enjoy.

California is not alone in seeing its large companies file for bankruptcy out of state. That is why 163 current and retired bankruptcy judges sent a letter to Congress supporting bankruptcy venue reform. So too have 42 state attorneys general.

A bi-partisan bankruptcy venue reform bill, H.R. 4421, co-sponsored

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