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AN INSPECTION OF THE BANKRUPTCY SYSTEM: IS IT TIME FOR REGULAR MAINTENANCE OR A MAJOR OVERHAUL?

HEARING

BEFORE THE

LEK TEAMMATES SUBCOMMITTEE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

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- Bankruptcy Venue Reform Act of 2018, S.2282, 115th Congress, 2nd Session, January 8, 2018, https://www.congress.gov/bill/115th-congress/senate-bill/2282/text?s=3&r=1&q=%7B%22search%22%3A%22s2282%22%7D
- New York City Bar, Report Opposing the Bankruptcy Venue Reform Act of 2018, https://www.nycbar.org/reports/report-opposing-the-bankruptcy-venue-reform-act-of-2018/?back=1
- Chapter 11 Bankruptcy Venue Reform Act of 2011, H.R.2533, 112th Congress, 1st Session, July 14, 2011, https://www.congress.gov/bill/112th-congress/house-bill/2533/text?s=6&r=1&q=%7B%22search%22%3A%22hr+2533%22%7D
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- Iken, Stephanie, The Ethical Implications of the Texas Two Step (May 10, 2024). SSRN: https://ssrn.com/abstract=4824091 or http://dx.doi.org/10.2139/ssrn.4824091
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AN INSPECTION OF THE BANKRUPTCY SYSTEM: IS IT TIME FOR REGULAR MAINTENANCE OR A MAJOR OVERHAUL?

SEPTEMBER 26, 2024

UNITED STATES SENATE
LEK TEAMMATES SUBCOMMITTEE
COMMITTEE ON THE JUDICIARY
Austin, Texas

The Subcommittee met, pursuant to notice, at 6:15 p.m., Headliners Club, Austin, Texas, Liz Wates, Chair of the Subcommittee, presiding.

Present: Senators Anna Turney, Fiona Filewright, Luke Atmey, Tammy Wynott, Willie Makette.

Absent: Senator Ray Battaglia

WELCOME AND CALL TO ORDER

CHAIRPERSON LIZ WATES. Ladies and gentlemen, the Subcommittee will come to order. Thank you for joining this hearing of the LEK TeamMates Subcommittee of the US Senate Committee on the Judiciary. I am the chair of the subcommittee, Liz Wates, and waits, and waits, and waits for Congress to pass bankruptcy reform. But nevertheless, I persist!!

I would like to thank the LEK TeamMates Subcommittee for their time and consideration of the important topics to be discussed in today's hearing entitled "An Inspection of the Bankruptcy System: Is it time for regular maintenance or a major overhaul?"

This hearing will be broken down into three parts, with each part focusing on legislation that has been introduced and referred to the U.S Senate Committee on the Judiciary and forwarded to this Subcommittee. These bills all focus on bankruptcy reform, and I look forward to hearing from our distinguished panel of witnesses today about how the bills would affect our constituents and the bankruptcy practice as a whole.

I want to remind the distinguished gentlemen and gentlewomen of the Subcommittee, as well as our witnesses, that we adhere to a very strict schedule here. Each bill will be given 12 minutes.

We will start with Senate Bill 4095. I am pleased to recognize the distinguished gentlewoman from New Jersey, Senator Fiona Filewright, for her opening statement.

***The Road to Nowhere* (other than Delaware, New York, or Texas): Is forum shopping a net positive or negative for debtors, creditors, and the bankruptcy system as a whole?**
A Discussion of Senate Bill 4095, the Stop Helping Outcome Preferences (SHOP) Act

OPENING STATEMENT, SENATOR FIONA FILEWRIGHT, SPONSOR

SENATOR FIONA FILEWRIGHT. It is my pleasure to introduce Senate Bill 4095, the Stop Helping Outcome Preferences or "Shop" Act. This long overdue and non-partisan bill will modify the rules governing venue selection in bankruptcy proceedings to prevent the prevalent and pernicious practice we all know as "forum shopping." This bill is necessary to reduce the rampant strategic manipulation of savvy corporations who file cases in corporate-friendly districts like Delaware, the Southern District of New York, and Houston. We need to force corporations to file their cases closer to where they actually operate and where their creditors are most impacted so that those creditors have a fair opportunity to participate. I invite you all to vote in favor of this bill, which will strengthen public confidence in our federal judiciary system. Thank you!

Allow me to introduce our witnesses. Professor L. PoLuki and Cleve Burkeland of Burkeland & Ellis.

STATEMENTS OF WITNESSES

PROF. L. POLUKI. Good evening.

CLEVE BURKELAND, BURKELAND & ELLIS. Excuse me, Professor PoLuki, I've got to run a meeting, so I'm going to jump in here. My name is Cleve Burkland or Burkland & Ellis. Here with me are my associates Billy, Bobby, Sally, Timmy, and Jamie; I also brought my limo driver Lloyd and my pilot Amelia.

PROF. L. POLUKI. Of course you are, you can't travel anywhere without your entourage.

CLEVE BURKELAND, BURKELAND & ELLIS. Our firm has filed some of the largest chapter 11 cases over last decade. I am well positioned to speak on behalf of debtors' attorneys handling these large cases. We are opposed to the SHOP Act, which we ultimately harm debtors' and other stakeholders in large chapter 11 cases

PROF. L. POLUKI. Cleve, of course you are opposed to the SHOP Act. It will likely put a large dent in your quarterly profits and possibly even require you to fly commercial - how GASTLY!

CLEVE BURKELAND, BURKELAND & ELLIS. The goal of any chapter 11 reorganization should be to protect enterprise value and reorganize the debtor in most effective and efficient manner possible. This is in the best interest of debtors AND creditors.

PROF. L. POLUKI. In a perfect non-BIG LAW setting, that is true. Don't you really mean "in the best financial interest of the lawyers?

CLEVE BURKELAND, BURKELAND & ELLIS. Proposed reforms would dramatically limit debtor's flexibility in choosing venue and ultimately result in worse outcomes for all stakeholders.

PROF. L. POLUKI. It would clearly limit your ability to run down to your favorite forum, open a PO Box and then file your latest chapter 11 plan and try to fenagle confirmation in 36 hours.

CLEVE BURKELAND, BURKELAND & ELLIS. A broad body of case law developed over years if not decades provides certainty with respect to critical legal issues in these cases.

PROF. L. POLUKI. At least as long as you are getting the rulings that you want. Just this week, J&J refiled in Houston because they didn't like the rulings they were getting in New Jersey.

CLEVE BURKELAND, BURKELAND & ELLIS. Favored jurisdictions have developed local rules and procedures that streamline the restructuring process, provide clear guidance on issues likely to come up in large chapter 11 cases, and allow for hearings and adjudication of contested matters on expedited basis

PROF. L. POLUKI. Of course Mr. Burkeland likes the local rules when he's got the cell phone number of the Judge for real-time bench-to-bar communications.

CLEVE BURKELAND, BURKELAND & ELLIS. Judges in these jurisdictions have dealt with complex legal issues unique to chapter 11s and tend to be experienced commercial bankruptcy practitioners. They have the ability to move cases quickly and efficiently, resulting in lower administrative expenses and quicker distribution to creditors. I won't name any names (Bradley), but not all judges are created equal when it comes to running chapter 11 cases.

PROF. L. POLUKI. That's not unique to favored jurisdictions. Judges in districts like the Western District of Texas are perfectly capable of handling complex chapter 11 cases. Firms like Burkland want to be in a jurisdiction where they can have unfettered access to the courts and their staff, and where they can ram through plans with third-party releases and other provisions favorable to debtors and their insiders to the detriment of creditors.

CLEVE BURKELAND, BURKELAND & ELLIS. This proposed legislation is based on the theory that its unfair for bankruptcy proceedings to take place far from the debtor's principal place of business, which allegedly prevents local creditors from participating in bankruptcy. The reality is that administration and outcome of these large chapter 11 cases are not driven by disputes with individual unsecured creditors, who are often unimpaired, don't even have right to vote on plan. They usually will simply file proof of claim and rely on the Unsecured Creditors Committee to protect their interests. If they want to hire counsel locally, they generally can appear pro hac vice and by Zoom.

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PROF. L. POLUKI. The administration and outcome of these cases should include the opportunity for both secured and unsecured creditors to participate. Pro hac vice is unavailable without local counsel in the current preferred venues of Delaware and New Jersey, and many courts only permit Zoom appearances in non-evidentiary hearings.

CLEVE BURKELAND, BURKELAND & ELLIS. Most large cases are driven by larger financial institutions and creditors with offices in the larger metro areas that are favored jurisdictions. Most estate professionals, including debtor's counsel like our firm, restructuring professionals, and investment bankers are also located in favored jurisdictions. You can imagine what it's like to try to land a Gulfstream in Western District of Pennsylvania; not pretty. And good luck finding a Four Seasons within 200 miles.

PROF. L. POLUKI. Don't you mean the Ritz?

CLEVE BURKELAND, BURKELAND & ELLIS. If you've ever tried to get a fee application approved in these jurisdictions with rates at $5,000/hour you can forget it. It's a bloodbath. So, just because a debtor's principal assets are located in certain jurisdiction doesn't mean that venue is the most convenient or efficient location for proceedings.

PROF. L. POLUKI. Mr. Burkland seems to think that the primary purpose of bankruptcy is to serve the interests of estate professionals. The objective of the bankruptcy process is to be both transparent and convenient to the creditor body – not the Estate Professionals. Cleve mentions Pennsylvania, which is one of the jurisdictions that has very permissive virtual appearance rules. And courts shouldn't approve outrageous fees like the ones charged by firms like Burkeland & Ellis, which only diminishes recovery to creditors.

CLEVE BURKELAND, BURKELAND & ELLIS. In sum, SHOP Act is a solution in search of a problem and will ultimately result in less efficient proceedings and worse outcomes for debtors and other stakeholders in the bankruptcy process.

PROF. L. POLUKI. Oh contrare . . . the SHOP Act is the best solution to mitigate against the current abuse of the process at the corporate bankruptcy level and mend the public's perception that the fix is in for corporate bankruptcy. As Stephen Lubben at Setton Hall said: "If small creditors – even those with a "mere" Million Dollar claim – feel they are not getting a fair hearing, the entire process suffers!"

SUBCOMMITTEE MEMBERS' QUESTIONS AND WITNESSES' RESPONSES

SENATOR ANNA TURNEY. Is forum-shopping a problem under the current venue statute, and are there adequate means to address this issue under existing law?

CLEVE BURKELAND, BURKELAND & ELLIS. To answer the first question, I would say that it's not. Only a relatively small number of debtors have the means or ability to pick and choose among several venues under the existing statute. If they do choose a particular venue within the existing rules, they do so for good reasons, as stated in my introductory remarks. Simply put, ability to choose among several available venues ultimately results in more successful reorganizations and large distributions to creditors. Regarding the second part of your question, a mechanism already exists for compelling cases – a motion to transfer venue for "convenience" and in "interests of justice." The standard already takes into account the concerns purportedly underlying proposed legislation: (1) the proximity of the court to the debtor, creditors, parties key to administration of the estate, and critical witnesses, (2) the location of debtor's assets, and (3) the economic administration of estate.

PROF. L. POLUKI. Forum shopping is absolutely a problem. Law firms such as Burkland & Ellis exert entirely too much control over the system and, as we have seen in their practices in the Southern District and Virginia, the appearance of corruption abounds. Bankruptcy should be an open and fair system to all – not one where a select few can pick their judge of choice. The SHOP Act levels the playing field for all participants and will go a long way to keeping cases in the venue where they belong. There is not an adequate means to prohibit Forum Shopping because it is happening daily. While the Judges in the Western District of Texas do a good job of holding Debtor's counsel to the current venue, other Judges across this State and the country at large do not hold the likes of Cleve Burkland and his firm to the same standards that are applied to the bar generally. Federal legislation like new §1408 is necessary to offset the shear market force of Burkland and the mega firms. The current venue provisions are insufficient primarily because they place the burden of proof on the creditor seeking to transfer venue and not on the Debtor to establish the propriety of venue.

SENATOR LUKE ATMEY. Mr. Burkeland & Ellis, I am glad that you are here to provide your refined and well-reasoned insight. I can tell that you, like me, view the world through green-back tinted glasses as opposed to through reckless Marxist ideas. With respect to the SHOP Act, I am very concerned to the impact it would have on our system and I would like the record to reflect that I am wearing my dumpster-fire themed socks because that is exactly what the SHOP Act will create in many bankruptcy courts across our nation, a bunch of dumpster fires. So, Mr. Burkeland & Ellis, please explain to us how the SHOP Act will invite venue-related litigation in chapter 11 cases and the detriment that will have on our bankruptcy courts.

CLEVE BURKELAND, BURKELAND & ELLIS. The current rule allows for filing in state of incorporation – a clear, bright-line rule. The new rule would shift focus entirely to principal place of business and location of principal assets. It will invite litigation over debtor's principal place of

business or location of its principal of assets in critical early stages of bankruptcy filing. It creates uncertainty at the outset of the case over the threshold issue of venue when the court could otherwise be focused on first-day motions and ruling on preliminary matters that will establish the course of the case in the days and months to come.

PROF. L. POLUKI. There is a clear, bright-line rule for publicly traded companies – it's the location in the last annual report filed with the SEC. More importantly, it places the burden where it belongs – on the Debtor, which must show that its principal place of business or principal assets were located in its chosen venue in the 180 days preceding the filing date. It provides clarity and reasonable certainty. Shifting the focus to the principal place of business and location of principal assets gives the creditors a level of certainty in their risk calculations relating to collectability of their debt and the cost associated therewith.

CHAIRPERSON LIZ WATES. Venue reform, huh? I wonder why I never thought of that.

King of the Road: Are large businesses improperly manipulating the bankruptcy system? Is time to close the loopholes? A Discussion of Senate Bill 4746, Ending Corporate Bankruptcy Abuse Act of 2024

CHAIRPERSON LIZ WATES. For our next topic, Senate Bill 4746, I recognize the distinguished gentlewoman from Texas, Senator Tammy Wynott. Senator, I remind you and the witnesses of the time limitations.

OPENING STATEMENT, SENATOR TAMMY WYNOTT, SPONSOR

SENATOR TAMMY WYNOTT. I am Senator Tammy Wynott and along with, my colleagues, Sheldon Whitehouse, Democrat from Rhode Island, Senator Josh Hawley Republican from Missouri) and representatives Emilia Sykes (Democrat from Ohio) and Lance Gooden (Republican from TX), we propose Senate Bill 4746, entitled "Ending Corporate Bankruptcy Abuse," and I will read the summary of it, so listen up:

"A bill to amend title 11 United States Code, to make filing of a petition for relief under chapter 11 that is objectively futile or in **s**ubjective bad faith a cause for dismissal of the case, and to add limitations to the statutory automatic stay for debtors engaged in the Texas Two-Step." YEEHAW!

So, this is what happens, and why it is called the TEXAS TWO-STEP: Greedy corporations that have LOTs of assets and lots of debt or liability for mass torts uses state corporate laws like in Texas to create an affiliate corporation. So let's call greedy corporation "BIG DADDY" and little affiliate corporation, "Little Filly."

So BIG DADDY, keeps alllll of the assets and Little Filly gets all the debt and lawsuits and none of the assets! Then Little Filly files for bankruptcy protection, blocking lawsuits from

proceedin' against BIG DADDY. WHOOO Nelly! This is very bad, because tens of thousands of injured Americans are stuck in litigation, bankruptcy, and they don't get paid nuttin'!

I am Tammy Wynott, and I just told you *why* the Texas Two Step should *not* be allowed.

OK so, now we have some witnesses to speak for and agin' proposed Senate Bill 4746. So, let me hear from you Mr. Loophole Closer. Then, we will hear from Little Miss Dixie Loophole.

STATEMENT OF LOU POLKLOZAR

LOU POLKLOZAR. Chairperson Wates, esteemed members of the LEK TeamMates Subcommittee, thank you for the opportunity to testify today. I come before you today as the World's preeminent expert on the dangers of a little dance called the Texas Two Step to speak about a critical piece of legislation—the "Ending Corporate Bankruptcy Abuse Act of 2024." This bill is not just a legal adjustment but a moral and economic necessity that aims to restore fairness and integrity to the bankruptcy process. For far too long, large corporations have manipulated the system, using legal loopholes to shield themselves from accountability while leaving small businesses and victims of corporate wrongdoing to bear the brunt of their failures.

While the "Texas Two-Step" is technically legal, it is a deeply unethical maneuver that corporations have used to avoid compensating victims of their harmful actions—whether it's environmental damage, injuries caused by product defects, or other forms of corporate malfeasance. The Bankruptcy Code is currently inadequate to address the Big Daddy-friendly state laws like those in Texas that allow companies to ruin lives and merely move the liability to an empty shell of a company with no real way to ever compensate victims for their losses. This legislation will put an end to this exploitative practice and send a clear message that corporations must be held accountable for their actions.

Before we dive into the details of the legislation, let's take a moment to understand what the Texas Two-Step actually is and why it's such a harmful practice. As detailed by the wise Senator Wynott, a corporation facing significant legal liabilities, such as lawsuits from thousands of victims, takes advantage of a provision in Texas law that allows companies to split into two separate entities. One entity holds all of the company's valuable assets, and the other is left with the liabilities—such as lawsuits or debt obligations. The company then files for Chapter 11 bankruptcy on behalf of the newly created liability-holding entity, while the asset-rich entity continues to operate business as usual.

In essence, the company sheds its liabilities in bankruptcy without actually losing any of its valuable assets, much like a fraudulent transfer. Workers, retirees, suppliers, and the victims of corporate negligence—people who have legitimate claims against the company—are left with nothing or mere pennies on the dollar, while the company and its executives continue to profit. This is not just a financial strategy; it's a betrayal of trust, a manipulation of the legal system, and an outright assault on the rights of the people who are most vulnerable.

This bill seeks to outlaw this abusive practice and restore integrity to the bankruptcy process. Let's be clear: the Texas Two-Step is not just a loophole; it's a subversion of justice. It allows companies to avoid compensating victims, skirting responsibility for harm caused by their actions.

One of the most infamous examples of this tactic is Johnson & Johnson, the pharmaceutical and consumer goods giant. Faced with over 38,000 lawsuits related to its talcum powder products, which have been linked to cancer, Johnson & Johnson used the Texas Two-Step to create a subsidiary called LTL Management. They offloaded the legal liabilities from these lawsuits onto this new entity and promptly filed for bankruptcy. Meanwhile, Johnson & Johnson, a multi-billion-dollar corporation, continues to operate and profit without adequately compensating the victims of its dangerous products. In 2023, the year LTL filed its second go at Chapter 11, J&J posted profits of $35 billion, up from $17.9 billion the year before. All the while LTL Management was proposing to pay only $8.9 billion over 25 years. As discussed by the previous panel, J&J was unsuccessful in its first two attempts in New Jersey and is now bringing the Texas Two Step home to Houston for a third bankruptcy filed last week, now proposing to pay a total of $10 billion.

This is not just a matter of corporate strategy—it's a clear violation of ethical standards and a manipulation of the legal system to avoid accountability. If a company can continue making billions of dollars in profit while using bankruptcy to escape its legal obligations to victims, then something is deeply wrong with our system. The Texas Two-Step is a slap in the face to justice, and it is long past time for Congress to put an end to this practice.

Beyond addressing the Texas Two-Step, this legislation will have a profound impact on workers, small businesses, and communities. When corporations use bankruptcy to evade liability, it's not just the victims of defective products or environmental harm who suffer—workers, local suppliers, and entire communities are often left in financial ruin.

Take, for example, the case of Purdue Pharma, the maker of OxyContin. While not technically a Texas Two Step, the company declared bankruptcy in an attempt to limit its liability from thousands of lawsuits related to the opioid crisis and shield valuable assets held by another, which devastated countless families and communities. While the Sackler family, who owns Purdue, walked away with billions, while small businesses, healthcare systems, and communities were left to deal with the human and financial toll of the crisis. This bill will prevent future abuses like this by ensuring that corporations cannot use bankruptcy to escape accountability while protecting their wealth.

At its core, the bill is about restoring faith in our economic and legal systems. It's about ensuring that corporations cannot exploit loopholes to enrich themselves while leaving workers, victims, and small businesses to suffer the consequences. It's about fairness, accountability, and justice. I urge each of you to support this bill and take a stand against corporate greed and exploitation.

STATEMENT OF DIXIE LOU POHL

DIXIE LOU POHL. Chairperson Wates, esteemed members of the LEK TeamMates Subcommittee, thank you for the opportunity to testify today about the so-called "Ending Corporate Bankruptcy Abuse Act of 2024."

Senators, this bill is based on a fallacious presumption that Texas Two Step is a shady tactic that companies use to avoid compensating victims of mass torts. It completely disregards the mechanisms in the Bankruptcy Code that already exist to prevent abusive filings and assumes that the fine jurists on the bankruptcy bench are incapable of determining when a corporate filing is made in bad faith. It is mere political posturing, the promotion of a solution in search of a problem.

One author criticizes the Texas Two Step as a "hyper zealous" tactic that either "create[es] or exploit[s] loopholes" in the existing law.[13] This is a short-sighted perspective advocated by plaintiffs' attorneys who benefit less from an orderly resolution of mass tort claims in the bankruptcy process.

Think about the mechanics of a Texas Two Step. In a divisional merger, massive unliquidated liabilities are transferred to a non-operating affiliate. The operating company continues its business as usual, making useful products, sustaining thousands of jobs, and generating revenue. The new company can be headed by someone who is focused solely on the resolution of these claims and the compensation of the "victims", unhindered by operational demands of a functioning company. On the other hand, the operating company can be led by people whose sole focus is on the profitability and growth of that operating entity. While critics complain that the operating company is somehow "shielded from liability," the revenue generated by that operating company is the sole source of recovery for the allegedly injured parties. Shouldn't we all want that operating company to do as well as possible so that the funding to the non-operating company, and ultimately, any legitimately injured plaintiffs is maximized?

These plaintiffs' attorneys are essentially complaining that they can't get their hands on the profits that companies like Johnson & Johnson and Perdue Pharma have made from products that have never harmed anyone. They argue that the operating entity is not required to expose its financials so that plaintiffs can try to maximize their recoveries. Senators, have these critics never heard of the Securities and Exchange Commission or the required financial filings that would provide all the information putative creditors need to determine if the amount of the funding proposed in the reorganization is fair and equitable?

The Texas Two Step is nothing but a "pot plan" on a different scale. No one is suggesting that, as a general rule, chapter 11 plans that provide a finite recovery to unsecured creditors in a lump sum payment are automatically unethical and unfair. Because it's not.

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[13] Iken, Stephanie, The Ethical Implications of the Texas Two Step (May 10, 2024). Available at SSRN: https://ssrn.com/abstract=4824091 or http://dx.doi.org/10.2139/ssrn.4824091

Jared Ellias, the Scott C. Collins Professor of Law at Harvard Law School, correctly explains that the bankruptcy process actually benefits the plaintiffs with mass tort claims because it provides "uniformity of treatment for all plaintiffs" and the recovery to later plaintiffs isn't diluted by the recovery to the plaintiffs who win the race to the courthouse. The bankruptcy process could lead to a quicker resolution than a state law process with years of litigation and appeals. Attorneys' fees and expenses are minimized when you have 1 set of attorneys representing all the potential class members instead of numerous firms with their fingers in the pie.[14]

If the strategic divisional merger to deal with mass tort claims is deemed presumptively abusive, no one but the lawyers will win. The tort claims will continue to go through lengthy and uneven state court or MDL procedures. Businesses that employ thousands of people and provide useful, necessary, *safe* products will be unable to deliver. Does anyone want to live in an America where babies smell weird because Johnson & Johnson was driven out of business over a product it no longer makes and no one can get its iconic baby wash anymore? No one, and certainly not the hypothetical injured plaintiffs, benefits in that scenario.

As a policy matter, the federal government has already determined that it is not beneficial to undermine and disrupt useful, productive industries just because certain products end up having deleterious effects on a minority of the population. We call it the National Vaccine Injury Compensation Program.

Bankruptcy Judges are perfectly capable of applying existing law to determine when cases are filed in bad faith, as demonstrated by decades of case law. Indeed, the LTL Management bankruptcy filing——the bogeyman that gave rise to the myth of the abusive Texas Two Step——was twice dismissed under existing law.

The "Ending Corporate Bankruptcy Abuse Act of 2024" is a complete misnomer. It does nothing to end (non-existent) abuse of the bankruptcy process and will only delay and diminish recovery by people who have been allegedly injured by common products that were later determined to be unsafe.

SUBCOMMITTEE MEMBERS' QUESTIONS AND WITNESSES' RESPONSES

SENATOR TAMMY WYNOTT. Well, bless your heart Miss Loophole. That was just about the biggest bunch of nonsense I ever heard. I tip my hat to you Mr. Loophole Closer for talking real sense. That was as refreshing as a glass of iced tea on a summer day in Texas! I think we've got some questions heading y'all's way.

SENATOR WILLIE MAKETEE. What is the bankruptcy alternative if companies can't use the Texas Two Step?

[14] https://hls.harvard.edu/today/expert-explains-how-companies-are-using-a-controversial-bankruptcy-maneuver-to-handle-mass-tort-claims/

DIXIE LOU POHL. That's a great question, Senator Makette. The only alternative is to put the entire company into bankruptcy, which doesn't make sense from either a legal or practical perspective. If Johnson & Johnson, for example, had done a traditional chapter 11 without a divisional merger, the tort plaintiffs would have just complained that it was an abusive litigation tactic because the company was not insolvent or on the brink of insolvency. These plaintiffs' lawyers just want to have their cake and eat it to. And if Johnson & Johnson had done a traditional chapter 11 case, what would we have ended with? Probably a pot plan and a litigation trust. The exact same end result you'd get with a Texas Two Step, just longer, messier, and more expensive. Don't mess with the Texas Two Step!

SENATOR LUKE ATMEY. My question is directed at you Mr. Kaiser. I need you to look at me. My name is Senator Luke Atmey and I want to see your eyes, and everyone else's, upon me. Your position, frankly, is very problematic. Some of the best constituents in this great country of ours will be harmed by this reckless interference in state law property rights. I hope you understand how mad it makes me and so many others. (Baby Powder Explosion). If successful, banning the Texas Two-Step would limit a company's ability to restructure. Why take away such a good and lucrative option for some very giving heavyweights of our economy. How would you respond to this concern?

LOU POLKLOZAR. While the Texas Two-Step may appear to be a Restructuring tool, it is actually an abuse of the bankruptcy process. The bill does not prevent companies from filing for bankruptcy or reorganizing their debts. What it does is ensure that companies cannot use bankruptcy as a way to escape their financial responsibilities while continuing to profit at the expense of victims. This bill promotes responsible restructuring by ensuring that all stakeholders—especially victims—are treated fairly. It doesn't limit a company's ability to restructure; it simply prevents companies from manipulating the system to avoid accountability.

CHAIRPERSON LIZ WATES. Now I like to go to the Broken Spoke as much as the next person, but let's Texas Two Step to the next topic.

Long Promised Road: Can and should the bankruptcy rules be revised to offer more relief to small businesses and individuals? A Discussion of Senate Bill 4150, Bankruptcy Threshold Adjustment Extension Act

CHAIRPERSON WATES. I recognize the distinguished gentlewoman from California, Senator Anna Turney.

OPENING STATEMENT, SENATOR ANNA TURNEY, SPONSOR

SENATOR ANNA TURNEY. Senate Bill 4150, the Bankruptcy Threshold Adjustment Act, simply proposes to extend the debt limits for an additional two years (from $3mm to $7.5mm for

cases under Subchapter V and to a combined limit of $2.5M for Chapter 13 cases). The debt limits have been extended twice; I would like to introduce the two witnesses.

Mr. "Stupid" is a Sub V Trustee and a member of the National Association of Bankruptcy Trustees and will be testifying/arguing against the bill. He claims he is known for his high consensual Sub V Plan confirmation rate and his commitment to bankruptcy integrity……and also his promotion of democracy and world peace?

Also, Ms. "For More Debt Relief," a well-known and respected advocate for necessary debt relief for small businesses and consumers.

Mr. Stupid, please proceed …if you can, it seems like you are dealing with trauma. Before you start maybe you should address the elephant in the room

STATEMENT OF STU PITT

STU PITT. My name is pronounced Stoo Pitt. And the bill should fail. For some reason, I am feeling extreme pressure …almost physical pain in my head because I am so stressed out that you all may increase the limit 4 million dollars without any thought to the serious consequences to the bankruptcy system.

I will just say what you are thinking – I am having a really bad hair day. It was difficult to put on this hat. I asked my associate R. Battaglia to cut out an article for me, which made him mad because I asked him to do some work. After he finished, he looked at me with horror and ran out of the building… not sure where he is.

The proposal in the Bill is parlous and perilous and maybe even dangerous. A higher debt limit will "illiterate" the integrity of the bankruptcy system providing more opportunity for abuse and ethical violations. Quite frankly, anyone in favor of the Bill is obviously against democracy and world peace.

The $3 million debt level was only active for a few months before the Cares act raised it because of the pandemic; the sunset of the $7.5 million limit only happened a few months ago; we should allow the original debt level to remain considering all of the abuse that has occurred with the higher level – if ain't broke why break it?

And the debt level was raised once with the cares act and then twice in June of 2022. Fool me once…shame on …you. Fool me twice…and uh you shouldn't get fooled again…shame on all of you.

During the higher debt level time period, the abuse was prevalent. Debtor's attorneys will continue to use unethical "strategery." During the high debt level period, Debtor's attorneys didn't test the viability of the companies and instead took large retainers and filed with the attitude of "let's see if we can win the lottery." This caused more failed filings where administrative expenses, including sub v fees were not paid. The higher debt level will also provide more opportunity for

unethical behavior by debtors and their lawyers with respect to arguments that debt is contingent and shouldn't be counted

Therefore, increased eligibility equals more cases which equals more conversions or dismissals; at best we will get more nonconsensual plans, which make the process more expensive for the debtors because trustees will have to be disbursing agents….so most of all it will make trustees crazy…feeling like they have something lodged in their head …requiring them to be disbursing agents without getting paid while they are working over five years plan periods…effectively involuntary servitude. Sub v trustees will be too busy; with no life outside of work; this will lead to bad marriages; bad parenting; negative societal impact that will wreak havoc for generations to come. Although I am not involved in consumer cases, all the same sound arguments apply to why you should not raise the debt limits in consumer cases.

STATEMENT OF FORMORÉ D´ETRELIEF

FORMORÉ D´ETRELIEF. First, my name is Formoré D´Etrelief, not "for more debt relief." Stupid is speaking with conclusory platitudes. Arguments related to unethical behavior do not belong in this discussion. The bankruptcy system provides checks and remedies for this in any situation. And someone should just tell Stupid he has scissors lodged in his head.

The bill should pass for three reasons. (1) America needs it. (2) The parties and the players want it. (3) the proof is in the pudding – higher debt limit works – and we gotta have it.

(1) America needs it. Subchapter V debtors today cannot have debt in excess of $3,024,725. Chapter 13 debtors no longer benefit from a combined debt limit of $2.75M for both secured and unsecured debt. These rules prevent access to the bankruptcy system for a large swath of businesses and consumers and nothing can be worse for the American economy. "Small businesses are the lifeblood of the U.S. economy: they create two-thirds of new jobs and drive U.S. innovation and competitiveness."[15]

Small businesses are less likely to file traditional Chapter 11 due to the costs, the time it takes to complete the process, and the loss of equity interests because of the absolute priority rule. Small businesses are "too big" for a Chapter 13, and "too small" for complex Chapter 11 case and they practically have no protections under Chapter 11. Statements by members of Congress that backed Sub V explained: that "approximately 20% of small businesses survive the first year, but by the five-year mark only 50% are still in business and by the 10-year mark only one-third survive."[16]

(2) The parties and the players want it. The debt limit should be increased so that more small businesses can benefit from SubV due to its enormous benefits as shown below in this comparison chart:

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[15] American Bankruptcy Institute, AI Subchapter V Task Force Final Report, 2024 Spring Annual Meeting.

[16] 165 Cong. Rec. E977-05 (daily ed. July 24, 2019) (statement of Rep. Jackson).

Subchapter V	Traditional Chapter 11
Lower cost No UST Fees. No Committees, and no fees	High financial barrier UST Fees based on disbursements Committee Fees
Flexible Confirmation timeline Plan in 90 days No deadline for confirmation	Less Flexible Confirmation timeline 120 days exclusivity 180 day deadline for confirmation
Easier to Meet Confirmation Requirements Admin expenses can be paid over 3 -5 years	Stringent Confirmation Requirements Admin expenses must be paid in full on the Effective Date.
No Absolute Priority	Absolute Priority Results in extensive negotiations and confirmation extended out for years
No Creditor Support Needed, so long as the plan provides that all the debtor's disposable income over the course of the plan period will be dedicated to repayment of unsecured creditors and that secured creditors will receive the benefit of their security.	At least One Impaired Class Needed
Policy Benefits equal costs; small businesses can repay creditors over 3-5 years and stay in business	Policy Costs most times do not outweigh the benefit resulting in liquidation under Chapter 7 or in State Court

(3) The proof is in the pudding – higher debt limit works – and we gotta have it. The Statistics from the United States Trustee's Office show success not ethical violations. The number of cases have increased from 1,118 in 2020 to 2,468 filings through August 31, 2024.[17] But importantly, the Case Outcomes Summary Disposition show and I quote: "Compared to other (non-subchapter V) chapter 11 small business cases, subchapter V cases have had approximately double the percentage of confirmed plans and half the percentage of dismissals, as well."[18] Of subchapter V cases with confirmed plans, 69 percent of the confirmed plans have been consensual plans.[19] So creditors are benefiting because they are voting for the plans. A higher debt limit will allow creditors to be repaid out of Debtors' disposable income in Chapter 11 rather than pennies in liquidation. SubV Trustee involvement post confirmation provides another level of security that the debtor will make good on the plan.

Two additional things to add. First, Mr. Pitt is correct that the impact on SubV Trustees needs to be examined. However, bankruptcy courts across the country are putting in place local

[17] Chapter 11 Subchapter V Statistical Summary Through August 31, 2024, https://www.justice.gov/ust/page/file/1499276/dl

[18] *Id.*

[19] *Id.*

rules to streamline how Sub V Trustees are getting paid and when they are getting paid. This is an independent issue and there is no evidence that increasing the debt limit will harm Sub V Trustees.

Second: Let's talk about Consumers – increasing the debt limit will have a significant impact on eligibility for Chapter 13 bankruptcy, especially in California, where many homeowners have high mortgage balances.

SUBCOMMITTEE MEMBERS' QUESTIONS AND WITNESSES' RESPONSES

SENATOR FIONA FILEWRIGHT. Very well said Ms. For More Debt Relief. Mr. Stupid, do you think your judgment is impaired for some reason? Your arguments seem to have no real thought about relief that small businesses need. Abuse and ethical violations may occur but that may be true for any debt level. Isn't that a discussion for a different day?

STU PITT. Madam Senator, your comment suggests you are against the integrity of the bankruptcy system and quite frankly against world peace. And Ms. ForMoreDebtRelief is the *pineapple* of politeness, but her arguments are dangerous to bankruptcy. I'm having a moment of clarity – most important consideration is that the purpose behind eliminating the absolute priority rule was to allow the businesses operated by the persons who control the equity to continue. The AA-UST, the Advocates Against Undesirable, Strange Things (not associated with the UST, which also does God's work generally in the bankruptcy arena), have done a study, that found that companies above the 3mm debt level are, in 99% of the cases, controlled by equity that is not actively involved in the company; they are just monetary investors. A higher debt level provides the incentive for institutional investors to run the companies through bankruptcy for their benefit when they haven't put their heart and soul into the businesses and just want to take over the sub v market like they have done with the housing industry and the healthcare industry. Institutional investors should not get the benefit of NO absolute priority rule. And they will if you raise the debt limit. Bottomline is that more failed cases will ruin my statistics …and my life

SENATOR TAMMY WYNOTT. Well, I am reminded of a partial quote from the movie Billy Madison, which was also fully quoted in one of Judge Clark's orders dismissing a pleading for incomprehensibility. Mr. Stupid, "what you've just said is one of the most insanely idiotic things I have ever heard. At no point in your rambling, incoherent response were you even close to anything that could be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul." Sounds like you are just bitter and unhappy with being a trustee, which is what you signed up for.

What do you think Ms. For More Debt Relief? Will a higher debt limit create more opportunities for institutional investors to take over the Sub V market?

FORMORÉ D´ETRELIEF. No. That's based on a false premise. Let's look at what the Absolute Priority Rule provided to creditors:

(a) Strategic advantage used to block confirmation when liquidation of the business or new ownership is more attractive. Practically – this strategic advantage in blocking confirmation leads to a lose-lose situation. Creditors do not get paid when businesses close their doors. New owners often do not want to continue the existing company.

(b) More money into creditor's hands by forcing existing equity holders to put new money into the business to obtain confirmation. There is no floor or ceiling as to the amount of this "new money." Under Sub V, the requirement that unsecured creditors receive "the Debtor's projected disposable income" for 3 – 5 years, "appears to be an effective substitute for the protections of the absolute priority rule in a non-Subchapter V case and as a practical matter is more beneficial to unsecured creditors."[20]

CHAIRPERSON WATES. Thank you for that interesting discussion. That concludes this hearing of the LEK TeamMates Subcommittee of the U.S. Senate Committee on the Judiciary. I would like to thank the members of the Subcommittee, Senator An Attorney, Senator Fiona Filewright, Senator Tammy Why Not, Senator Look At Me, and Senator Will He Make It. I would also like to encourage Mr. Stupid to proceed immediately to the emergency room to have the scissors removed from his skull. Have a wonderful evening.

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[20] American Bankruptcy Institute, AI Subchapter V Task Force Final Report, 2024 Spring Annual Meeting, p. 13.

118TH CONGRESS
2D SESSION

S. 4095

To amend title 28, United States Code, to limit the authority of district courts to provide injunctive relief, to modify venue requirements relating to bankruptcy proceedings, and to ensure that venue in patents cases is fair and proper, and for other purposes..

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2024

Mr. MCCONNELL (for himself, Mr. COTTON, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 28, United States Code, to limit the authority of district courts to provide injunctive relief, to modify venue requirements relating to bankruptcy proceedings, and to ensure that venue in patents cases is fair and proper, and for other purposes..

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLES.

This Act may be cited as the ''Stop Helping Outcome Preferences Act'' or the ''SHOP Act''.

SEC. 2. NATIONWIDE INJUNCTION ABUSE PREVENTION.

(a) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following:

"§ 1370. Limitation on authority to provide injunctive relief

''Notwithstanding any other provision of law, a district court may not issue any order providing injunctive relief unless such order is applicable only to—

''(1) the parties to the case before the court; or

''(2) similarly situated individuals in the judicial district in which the district court has jurisdiction.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 84 of title 28, United States Code, is amended by adding at the end the following:

''1370. Limitation on authority to provide injunctive relief.''.

SEC. 3. PREVENTING JUDGE SHOPPING.

(a) IN GENERAL.—Chapter 131 of title 28, United States Code, is amended by inserting after section 2075 the following:

"§ 2076. Preventing judge shopping

''(a) IN GENERAL.—Rules promulgated under this chapter may not permit an attorney to be admitted to practice in any Federal court if a disciplinary body of judges properly constituted under the rules and proce-

dures of a Federal court determines that such attorney has engaged in judge shopping.

''(b) DEFINED TERM.—In this section, the term 'judge shopping' means attempting to interfere with a court's case assignment process for the purpose of influencing the assignment of a particular judge to preside over a particular case by—

''(1) engaging in ex parte communications with a judge or a judge's chambers;

''(2) successive filing of materially identical suits within a State, district, or circuit without good cause;

''(3) successive filing of materially identical suits with different plaintiffs;

''(4) improperly marking a suit as a related case under existing court docketing practices; or

''(5) otherwise attempting to change the assignment of a case after its filing, excepting a motion to recuse.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 131 of title 28, United States Code, is amended by inserting after the item relating to section 2075 the following:

''2076. Preventing judge shopping.''.

SEC. 4. BANKRUPTCY VENUE REFORM.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Venue Reform Act of 2024''.

(b) FINDINGS.—Congress finds the following:

(1) Bankruptcy laws provide a number of venue options for filing bankruptcy under chapter 11 of title 11, United States Code, including, with respect to the entity filing bankruptcy—

(A) any district in which the place of incorporation of the entity is located;

(B) any district in which the principal place of business or principal assets of the entity are located; and

(C) any district in which an affiliate of the entity has filed a pending case under title 11, United States Code.

(2) The wide range of permissible bankruptcy venue options has led to an increase in companies filing for bankruptcy outside of the district in which the principal place of business or principal assets of the company is located, a practice that is commonly known as ''forum shopping''.

(3) Forum shopping—

(A) has resulted in a concentration of bankruptcy cases in a limited number of judicial districts;

(B) prevents small businesses, employees, retirees, creditors, and other important stakeholders from fully participating in bankruptcy cases that have tremendous impacts on their lives, communities, and local economies; and

(C) deprives district courts of the United States and courts of appeals of the United States of the opportunity to contribute to the development of bankruptcy law in the jurisdictions of those district courts.

(4) Reducing the incidence of forum shopping in the bankruptcy system will strengthen the integrity of, and build public confidence and ensure fairness in, the bankruptcy system.

(c) PURPOSE.—The purpose of this section is to prevent the practice of forum shopping in bankruptcy cases filed under chapter 11 of title 11, United States Code.

(d) VENUE OF CASES UNDER TITLE 11.—Title 28, United States Code, is amended—

(1) by amending 1408 to read as follows:

"§ 1408. Venue of cases under title 11

''(a) PRINCIPAL PLACE OF BUSINESS WITH RESPECT TO CERTAIN ENTITIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), for the purposes of this section, if any en-

tity is subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)), the term 'principal place of business', with respect to such entity, means the address of the principal executive office of the entity, as stated in the last annual report filed under such Act before the commencement of a case under title 11 of which the entity is the subject.

''(2) EXCEPTION.—With respect to an entity described in paragraph (1), the definition of 'principal place of business' shall apply, for purposes of this section, unless another address is shown, by clear and convincing evidence, to be the principal place of business of such entity.

''(b) VENUE.—Except as provided in section 1410, a case under title 11 may be commenced only in the district court for the district—

''(1) in which the domicile, residence, or principal assets in the United States of an individual who is the subject of the case have been located—

''(A) during the 180-day period immediately preceding such commencement; or

''(B) for a longer portion of such 180-day period than the domicile, residence, or principal

assets in the United States of the individual were located in any other district;

''(2) in which the principal place of business or principal assets in the United States of an entity, other than an individual, that is the subject of the case have been located—

''(A) during the 180-day period immediately preceding such commencement; or

''(B) for a longer portion of such 180-day period than the principal place of business or principal assets in the United States of the entity were located in any other district; or

''(3) in which there is pending a case under title 11 concerning an affiliate that directly or indirectly owns, controls, or holds 50 percent or more of the outstanding voting securities of, or is the general partner of, the entity that is the subject of the later filed case, but only if the pending case was properly filed in such district in accordance with this section.

''(c) LIMITATIONS.—

''(1) IN GENERAL.—For purposes of paragraphs (2) and (3) of subsection (b), no effect shall be given to a change in the ownership or control of an entity that is the subject of the case, or of an affiliate of such entity, or to a transfer of the principal

place of business or principal assets in the United States, or to the merger, dissolution, spinoff, or divisive merger of an entity that is the subject of the case, or of an affiliate of such entity, to another district, if such event takes place—

"(A) during the 1-year period immediately preceding the date on which the case is commenced; or

"(B) for the purpose, in whole or in part, of establishing venue.

"(2) PRINCIPAL ASSETS.—

"(A) PRINCIPAL ASSETS OF AN ENTITY OTHER THAN AN INDIVIDUAL.—For purposes of subsection (b)(2) and paragraph (1) of this subsection—

"(i) the term 'principal assets' does not include cash or cash equivalents; and

"(ii) any equity interest in an affiliate is located in the district in which the holder of the equity interest has its principal place of business in the United States, as determined in accordance with subsection (b)(2).

"(B) EQUITY INTERESTS OF INDIVIDUALS.—For purposes of subsection (b)(1), if

the holder of any equity interest in an affiliate is an individual, the equity interest is located in the district in which the domicile or residence in the United States of the holder of the equity interest is located, as determined in accordance with subsection (b)(1).

''(d) BURDEN OF PROOF.—On any objection to, or request to change, venue under paragraph (2) or (3) of subsection (b) of a case under title 11, the entity that commences the case shall bear the burden of establishing, by clear and convincing evidence, that venue is proper under this section.

''(e) OUT-OF-STATE ADMISSION FOR GOVERNMENT ATTORNEYS.—The Supreme Court shall prescribe rules, in accordance with section 2075, for cases or proceedings arising under title 11, or arising in or related to cases under title 11, to allow any attorney representing a governmental unit to be permitted to appear on behalf of the governmental unit and intervene without charge, and without meeting any requirement under any local court rule relating to attorney appearances or the use of local counsel, before any bankruptcy court, district court, or bankruptcy appellate panel.''; and

(2) to amend section 1412 to read as follows:

"§ 1412. Change of venue

''(a) IN GENERAL.—Notwithstanding that a case or proceeding under title 11, or arising in or related to a case under title 11, is filed in the correct division or district, a district court may transfer the case or proceeding to a district court in another district or division—

''(1) in the interest of justice; or

''(2) for the convenience of the parties.

''(b) INCORRECTLY FILED CASES OR PROCEEDINGS.—If a case or proceeding under title 11, or arising in or related to a case under title 11, is filed in a division or district that is improper under section 1408(b), the district court shall—

''(1) immediately dismiss the case or proceeding; or

''(2) if it is in the interest of justice, immediately transfer the case or proceeding to any district court for any district or division in which the case or proceeding could have been brought under such section.

''(c) OBJECTIONS AND REQUESTS RELATING TO CHANGES IN VENUE.—Not later than 14 days after the filing of an objection to, or a request to change, venue of a case or proceeding under title 11, or arising in or related to a case under title 11, the court shall enter an order granting or denying such objection or request.''.

SEC. 5. VENUE EQUITY IN PATENT CASES.

(a) SHORT TITLE.—This section may be cited as the ''Venue Equity and Non-Uniformity Elimination Act of 2024''.

(b) AMENDMENT.—Section 1400(b) of title 28, United States Code, is amended to read as follows:

''(b) Notwithstanding subsections (b) and (c) of section 1391, any civil action for patent infringement or any action for a declaratory judgment that a patent is invalid or not infringed may be brought only in a judicial district—

''(1) in which the defendant has its principal place of business or is incorporated;

''(2) in which the defendant has committed an act of infringement of a patent in suit and has a regular and established physical facility that gives rise to such act of infringement;

''(3) in which the defendant has agreed or consented to be sued in such action;

''(4) in which an inventor named on the patent in suit conducted research or development that led to the application for the patent in suit;

''(5) in which a party has a regular and established physical facility that such party controls and operates, not primarily for the purpose of creating venue, and has—

"(A) engaged in management of significant research and development of an invention claimed in a patent in suit before the effective filing date of the patent;

"(B) manufactured a tangible product that is alleged to embody an invention claimed in a patent in suit; or

"(C) implemented a manufacturing process for a tangible good in which the process is alleged to embody an invention claimed in a patent in suit; or

"(6) in the case of a foreign defendant that does not meet the requirements of paragraph (1) or (2), in accordance with section 1391(c)(3).".

(c) MANDAMUS RELIEF.—For the purpose of determining whether relief may issue under section 1651 of title 28, United States Code, a clearly and indisputably erroneous denial of a motion under section 1406(a) of such title to dismiss or transfer a case on the basis of section 1400(b) of such title shall be deemed to cause irremediable interim harm.

(d) TELEWORKERS.—The dwelling or residence of an employee or contractor of a defendant who works at such dwelling or residence shall not constitute a regular and established physical facility of the defendant for purposes

of section 1400(b)(2) of title 28, United States Code, as added by subsection (a).

○

28 U.S.C. § 1370. Limitation on authority to provide injunctive relief

Notwithstanding any other provision of law, a district court may not issue any order providing injunctive relief unless such order is applicable only to—

(1) the parties to the case before the court; or

(2) similarly situated individuals in the judicial district in which the district court has jurisdiction.

28 U.S.C. § 1408. Venue of cases under title 11

(a) Principal place of business with respect to certain entities.—

(1) IN GENERAL.—Except as provided in ~~section 1410 of this title,~~ paragraph (2), for the purposes of this section, if any entity is subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)), the term 'principal place of business', with respect to such entity, means the address of the principal executive office of the entity, as stated in the last annual report filed under such Act before the commencement of a case under title 11 of which the entity is the subject.

(2) EXCEPTION.—With respect to an entity described in paragraph (1), the definition of 'principal place of business' shall apply, for purposes of this section, unless another address is shown, by clear and convincing evidence, to be the principal place of business of such entity.

(b) Venue.—Except as provided in section 1410, a case under title 11 may be commenced only in the district court for the district—

(1) in which the domicile, residence, ~~principal place of business in the United States, or~~ or principal assets in the United States~~,~~ of ~~the person or entity that~~an individual who is the subject of ~~such~~the case have been located ~~for~~—

(A) during the ~~one hundred and eighty days~~180-day period immediately preceding such commencement~~,~~; or

(B) for a longer portion of such ~~one hundred and eighty~~180-day period than the domicile, residence, or principal ~~place of business,~~assets in the United States~~,~~ of the individual were located in any other district;

(2) in which the principal place of business or principal assets in the United States of an entity, other than an individual, that is the subject of the case have been located—

(A) during the 180-day period immediately preceding such commencement; or

(B) for a longer portion of such 180-day period than the principal place of business or principal assets in the United States~~,~~ of ~~such person~~the entity were located in any other district; or

(3) in which there is pending a case under title 11 concerning ~~such person's~~an affiliate~~,~~ that directly or indirectly owns, controls, or holds 50 percent or more of the outstanding voting securities of, or is the general partner~~, or partnership~~ of, the entity that is the subject of the later filed case, but only if the pending case was properly filed in such district in accordance with this section.

(c) Limitations.—

(1) IN GENERAL.—For purposes of paragraphs (2) and (3) of subsection (b), no effect shall be given to a change in the ownership or control of an entity that is the subject of the case, or of an affiliate of such entity, or to a transfer of the principal place of business or principal assets in the United States, or to the merger, dissolution, spinoff, or divisive merger of an entity that is the subject of the case, or of an affiliate of such entity, to another district, if such event takes place—

(A) during the 1-year period immediately preceding the date on which the case is commenced; or

(B) for the purpose, in whole or in part, of establishing venue.

(2) PRINCIPAL ASSETS.—

(A) PRINCIPAL ASSETS OF AN ENTITY OTHER THAN AN INDIVIDUAL.—For purposes of subsection (b)(2) and paragraph (1) of this subsection—

(i) the term 'principal assets' does not include cash or cash equivalents; and

(ii) any equity interest in an affiliate is located in the district in which the holder of the equity interest has its principal place of business in the United States, as determined in accordance with subsection (b)(2).

(B) EQUITY INTERESTS OF INDIVIDUALS.—For purposes of subsection (b)(1), if the holder of any equity interest in an affiliate is an individual, the equity interest is located in the district in which the domicile or residence in the United States of the holder of the equity interest is located, as determined in accordance with subsection (b)(1).

(d) Burden of proof.—On any objection to, or request to change, venue under paragraph (2) or (3) of subsection (b) of a case under title 11, the entity that commences the case shall bear the burden of establishing, by clear and convincing evidence, that venue is proper under this section.

(e) Out-of-State admission for government attorneys.—The Supreme Court shall prescribe rules, in accordance with section 2075, for cases or proceedings arising under title 11, or arising in or related to cases under title 11, to allow any attorney representing a governmental unit to be permitted to appear on behalf of the governmental unit and intervene without charge, and without meeting any requirement under any local court rule relating to attorney appearances or the use of local counsel, before any bankruptcy court, district court, or bankruptcy appellate panel."; and

28 U.S.C. § 1412. Change of venue

~~A district court may transfer~~ (a) In general.—Notwithstanding that a case or proceeding under title 11, or arising in or related to a case under title 11, is filed in the correct division or district, a district court ~~for~~may transfer the case or proceeding to a district court in another district~~,~~ or division—

(1) in the interest of justice; or

(2) for the convenience of the parties.

(b) Incorrectly filed cases or proceedings.—If a case or proceeding under title 11, or arising in or related to a case under title 11, is filed in a division or district that is improper under section 1408(b), the district court shall—

(1) immediately dismiss the case or proceeding; or

(2) if it is in the interest of justice, immediately transfer the case or proceeding to any district court for any district or division in which the case or proceeding could have been brought under such section.

(c) Objections and requests relating to changes in venue.—Not later than 14 days after the filing of an objection to, or a request to change, venue of a case or proceeding under title 11, or arising in or related to a case under title 11, the court shall enter an order granting or denying such objection or request.".

118TH CONGRESS
2D SESSION

S. 4746

To amend title 11, United States Code, to make the filing of a petition for relief under chapter 11 that is objectively futile or in subjective bad faith a cause for dismissal of the case, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2024

Mr. WHITEHOUSE (for himself, Mr. HAWLEY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 11, United States Code, to make the filing of a petition for relief under chapter 11 that is objectively futile or in subjective bad faith a cause for dismissal of the case, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ending Corporate Bankruptcy Abuse Act of 2024''.

SEC. 2. CONVERSION OR DISMISSAL UNDER CHAPTER 11.

Section 1112(b) of title 11, United States Code, is amended—

(1) in paragraph (2)(A), by striking ''within a reasonable period of time'' and inserting ''not later than 24 months after the date of the filing of the petition'';

(2) in paragraph (4)—

(A) subparagraph (O), by striking ''and'' at the end;

(B) in subparagraph (P), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(Q) with respect to the dismissal of a case under this chapter, the filing of a petition for relief or the continuation of a case under this title that is—

''(i) objectively futile; or

''(ii) in subjective bad faith.''; and

(3) by adding at the end the following:

''(g)(1) For the purpose of subsection (b)(4)(Q), the court shall presume that a petition has been filed or that a case is continuing under this title in subjective bad faith if the court determines that the debtor manufactured the venue for the case.

''(2) The presumption under paragraph (1) may be rebutted only based on clear and convincing evidence.

''(h)(1) For the purpose of subsection (b)(4)(Q), the court shall conclusively presume that a petition has been filed or that a case under this title that is continuing in subjective bad faith if the court determines that—

''(A) a purpose or effect of the filing or continuation is to—

''(i) gain a tactical litigation advantage;

''(ii) impose undue delay upon creditors; or

''(iii) cap the total amount of the liability of the debtor to 2 or more creditors holding protected claims (as defined in section 362(p)(1)) that the debtor or any affiliate has property of value sufficient to pay in full as those claims would come due;

''(B) during the 4-year period preceding the date of the filing of the petition, the debtor was the subject of, or was formed or organized in connection with, a divisional merger or similar transaction changing the corporate structure of and affecting the financial condition of the debtor or an affiliate;

''(C) during the 4-year period preceding the date of the filing of the petition, the debtor engaged in a transfer of substantial assets to or for benefit of or incurred substantial obligations from or for the benefit of any insider or affiliate that, notwith-

standing subsections (e) through (g) and (j) of section 546, is avoidable under section 544(b) or subsection (a)(1) or (e) of section 548; or

''(D) the debtor does not have a valid reorganizational purpose.

''(2) In making a determination under paragraph (1)(D), the court shall consider and give weight to whether any appointed creditors' committee supports the dismissal of the case.

''(i) In a determination under subsection (g) or (h), the debtor shall have the burden of proof.''.

SEC. 3. LIMITATIONS ON CERTAIN STAYS AND INJUNCTIONS.

Section 105 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsection (a) of this section, any provision of title 28, the Federal Rules of Bankruptcy Procedure, or any applicable nonbankruptcy law, the court may not issue any order, process, or judgment that has the purpose or effect of overriding or nullifying section 362(b)(27) of this title.''.

SEC. 4. AUTOMATIC STAY.

Section 362 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (27), (28), and (29) as paragraphs (28), (29), and (30), respectively; and

(B) by inserting after paragraph (26) the following:

''(27) under subsection (a) of this section, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an entity that is not a debtor in a case under this title, or any act to obtain or recover property of such entity, on account of or with respect to a protected claim against such entity, the debtor, or the estate (including a protected claim that is property of the debtor or the estate against such entity), if, during the 4-year period preceding the date of the filing of the petition, the debtor was the subject of, or was formed or organized in connection with, a divisional merger, spinoff, corporate restructuring, or other transaction changing the corporate structure of, and affecting the financial condition of, the debtor or an affiliate;''; and

(2) by adding at the end the following:

''(p) For the purposes of paragraph (27):

''(1) The term 'protected claim' means—

''(A) a claim that—

''(i) is against a nondebtor entity or against property of a nondebtor entity that is alleged to be directly or indirectly liable for a claim described in subparagraph (B) against the debtor; and

''(ii) arises by reason of—

''(I) the nondebtor entity's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

''(II) the nondebtor entity's involvement in the management of the debtor or a predecessor in interest of the debtor or the nondebtor entity's service as an officer, director, or employee of the debtor or a related party;

''(III) the nondebtor entity's provision of insurance to the debtor or a related party; or

''(IV) the nondebtor entity's involvement in a transaction changing the corporate structure, or in a loan

or other financial transaction affecting the financial condition, of the debtor or a related party, including—

"(aa) involvement in providing financing (debt or equity) or advice to an entity involved in such a transaction; or

"(bb) acquiring or selling a financial interest in an entity as part of such a transaction; or

"(B) a claim—

"(i) against the debtor or a nondebtor entity or property of the debtor or a nondebtor entity;

"(ii) relating to injury, contamination, damage, or loss, including any claim for reimbursement, indemnity, contribution, or subrogation;

"(iii) affecting, directly or indirectly, not less than 100 individuals on or after the date of the filing of the petition;

"(iv) allegedly caused, directly or indirectly, by the presence of, or exposure to, a product, material, or substance designed, marketed, manufactured, sold, modified,

extracted, serviced, or in any way used by the debtor or the nondebtor entity; and

''(v) arising, directly or indirectly, from acts or omissions, of the debtor, a predecessor in interest of the debtor, or a past or present affiliate of the debtor.

''(2) The term 'related party' has the meaning given the term in section 524(g)(4)(A)(iii).''.

SEC. 5. TECHNICAL AMENDMENTS.

(a) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(B)(ii), by striking ''362(b)(27)'' and inserting ''362(b)(28)''; and

(B) in paragraph (3)(C), ''362(b)(27)'' and inserting ''362(b)(28)''; and

(2) in subsection (b)(1), ''362(b)(27)'' and inserting ''362(b)(28)''.

(b) RELIEF THAT MAY BE GRANTED UPON FILING PETITION FOR RECOGNITION.—Section 1519(f) of title 11, United States Code, is amended by striking ''(27)'' and inserting ''(28)''.

(c) RELIEF THAT MAY BE GRANTED UPON RECOGNITION.—Section 1521(f) of title 11, United States Code, is amended by striking ''(27)'' and inserting ''(28)''.

SEC. 6. APPLICATION AND RULE OF CONSTRUCTION.

This Act and the amendments made by this Act shall—

(1) apply with respect to any case under title 11, United States Code, filed or pending on or after the date of enactment of this Act; and

(2) not be construed to affect the validity of any final judgment or order confirming a plan under chapter 11 of title 11, United States Code, that was entered before the date of enactment of this Act.

○

11 U.S.C. § 1112. Conversion or Dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

(b)

(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests, of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtors or any other party in interest establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, ~~within a reasonable period of time~~not later than 24 months after the date of the filing of the petition; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

(4) For purposes of this subsection, the term "cause" includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under Rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; ~~and~~

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition; and~~.~~

(Q) with respect to the dismissal of a case under this chapter, the filing of a petition for relief or the continuation of a case under this title that is—

(i) objectively futile; or

(ii) in subjective bad faith.

(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.

(d) The court may convert a case under this chapter to a case under chapter 12 or 13 of this title only if—

(1) the debtor requests such conversion;

(2) the debtor has not been discharged under section 1141(d) of this title; and

(3) if the debtor requests conversion to chapter 12 of this title, such conversion is equitable.

(e) Except as provided in subsections (c) and (f), the court, on request of the United States trustee, may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate if the debtor in a voluntary case fails to file, within fifteen days after the filing of the petition commencing such case or such additional time as the court may allow, the information required by paragraph (1) of section 521(a), including a list containing the names and addresses of the holders of the twenty largest unsecured claims (or of all unsecured claims if there are fewer than twenty unsecured claims), and the approximate dollar amounts of each of such claims.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(g)

(1) For the purpose of subsection (b)(4)(Q), the court shall presume that a petition has been filed or that a case is continuing under this title in subjective bad faith if the court determines that the debtor manufactured the venue for the case.

(2) The presumption under paragraph (1) may be rebutted only based on clear and convincing evidence.

(h)

(1) For the purpose of subsection (b)(4)(Q), the court shall conclusively presume that a petition has been filed or that a case under this title that is continuing in subjective bad faith if the court determines that—

(A) a purpose or effect of the filing or continuation is to—

(i) gain a tactical litigation advantage;

(ii) impose undue delay upon creditors; or

(iii) cap the total amount of the liability of the debtor to 2 or more creditors holding protected claims (as defined in section 362(p)(1)) that the debtor or any affiliate has property of value sufficient to pay in full as those claims would come due;

(B) during the 4-year period preceding the date of the filing of the petition, the debtor was the subject of, or was formed or organized in connection with, a divisional merger or similar transaction changing the corporate structure of and affecting the financial condition of the debtor or an affiliate;

(C) during the 4-year period preceding the date of the filing of the petition, the debtor engaged in a transfer of substantial assets to or for benefit of or incurred substantial obligations from or for the benefit of any insider or affiliate that, notwithstanding subsections (e) through (g) and (j) of section 546, is avoidable under section 544(b) or subsection (a)(1) or (e) of section 548; or

(D) the debtor does not have a valid reorganizational purpose.

(2) In making a determination under paragraph (1)(D), the court shall consider and give weight to whether any appointed creditors' committee supports the dismissal of the case.

(i) In a determination under subsection (g) or (h), the debtor shall have the burden of proof.".

11 U.S.C. § 105. Power of Court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

(e) Notwithstanding subsection (a) of this section, any provision of title 28, the Federal Rules of Bankruptcy Procedure, or any applicable nonbankruptcy law, the court may not issue any order, process, or judgment that has the purpose or effect of overriding or nullifying section 362(b)(27) of this title.

11 U.S.C. § 362. Automatic Stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[(5) Repealed. Pub. L. 105–277, div. I, title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681–866;]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination

value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation

under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of

the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an entity that is not a debtor in a case under this title, or any act to obtain or recover property of such entity, on account of or with respect to a protected claim against such entity, the debtor, or the estate (including a protected claim that is property of the debtor or the estate against such entity), if, during the 4-year period preceding the date of the filing of the petition, the debtor was the subject of, or was formed or organized in connection with, a divisional merger, spinoff, corporate restructuring, or other transaction changing the corporate structure of, and affecting the financial condition of, the debtor or an affiliate

(~~27~~28) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under

any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue;

(~~28~~29) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act); and

(~~29~~30) under subsection (a)(1) of this section, of any action by—

(A) an amateur sports organization, as defined in section 220501(b) of title 36, to replace a national governing body, as defined in that section, under section 220528 of that title; or

(B) the corporation, as defined in section 220501(b) of title 36, to revoke the certification of a national governing body, as defined in that section, under section 220521 of that title.

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not

be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to

each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)

(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)

(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies

the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court

and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)

(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)

(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)

(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)

(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if—

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

(p) For the purposes of paragraph (27):

(1) The term "protected claim" means—

(A) a claim that—

(i) is against a nondebtor entity or against property of a nondebtor entity that is alleged to be directly or indirectly liable for a claim described in subparagraph (B) against the debtor; and

(ii) arises by reason of—

(I) the nondebtor entity's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the nondebtor entity's involvement in the management of the debtor or a predecessor in interest of the debtor or the nondebtor entity's service as an officer, director, or employee of the debtor or a related party;

(III) the nondebtor entity's provision of insurance to the debtor or a related party; or

(IV) the nondebtor entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including—

(aa) involvement in providing financing (debt or equity) or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction; or

(B) a claim—

(i) against the debtor or a nondebtor entity or property of the debtor or a nondebtor entity;

(ii) relating to injury, contamination, damage, or loss, including any claim for reimbursement, indemnity, contribution, or subrogation;

(iii) affecting, directly or indirectly, not less than 100 individuals on or after the date of the filing of the petition;

(iv) allegedly caused, directly or indirectly, by the presence of, or exposure to, a product, material, or substance designed, marketed, manufactured, sold, modified, extracted, serviced, or in any way used by the debtor or the nondebtor entity; and

(v) arising, directly or indirectly, from acts or omissions, of the debtor, a predecessor in interest of the debtor, or a past or present affiliate of the debtor.

(2) The term 'related party' has the meaning given the term in section 524(g)(4)(A)(iii).

118TH CONGRESS
2D SESSION

S. 4150

To amend the Bankruptcy Threshold Adjustment and Technical Corrections Act to extend bankruptcy eligibility requirements for an additional 2-year period.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2024

Mr. DURBIN (for himself, Mr. GRAHAM, Mr. WHITEHOUSE, Mr. GRASSLEY, Mr. COONS, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend the Bankruptcy Threshold Adjustment and Technical Corrections Act to extend bankruptcy eligibility requirements for an additional 2-year period.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bankruptcy Threshold Adjustment Extension Act''.

SEC. 2. EXTENSION OF TEMPORARY PROVISIONS.

Section 2(i)(1) of the Bankruptcy Threshold Adjustment and Technical Corrections Act (Public Law 117–151; 136 Stat. 1300) is amended, in the matter preceding

subparagraph (A), by striking ''2 years'' and inserting ''4 years''.

○

Chapter 11 Subchapter V Statistical Summary Through August 31, 2024[1]

Subchapter V Filing Summary

Time Period	Subchapter V Cases
Fiscal Year 2020	1,118
Fiscal Year 2021	1,717
Fiscal Year 2022	1,591
Fiscal Year 2023	1,985
Fiscal Year 2024	2,468

Chapter 11 Small Business Case Outcomes Summary

Disposition	Chapter 11 Small Business (Non-Subchapter V)		Subchapter V
	FY 2017 – FY 2019	FY 2020 – FY 2023	FY 2020 – FY 2023
Pending Without Confirmed Plan	1%	3%	4%
Plan Confirmed	31%	22%	52%
Converted	15%	22%	12%
Dismissed	54%	52%	31%
Total	100%	100%	100%
Median Months to Confirmation	10.8	10.4	6.6
Median Months to Dismissal	6.0	4.1	4.7

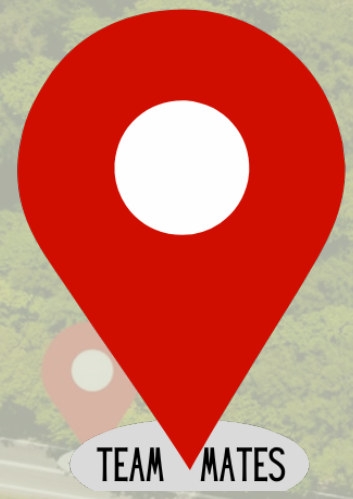
- Compared to other (non-subchapter V) chapter 11 small business cases, subchapter V cases have had approximately double the percentage of confirmed plans and half the percentage of dismissals, as well as a shorter time to confirmation.
- Of subchapter V cases with confirmed plans, 69 percent of the confirmed plans have been consensual plans.

[1] All totals are for cases filed in United States Trustee Program (USTP) districts (excluding Alabama and North Carolina) and include cases that opted into subchapter V during the time period, either during or after filing. Totals may change over time due to subsequent case status updates. Subchapter V disposition percentages reflect results through August 31, 2024, and exclude cases that amended out of subchapter V, either at the debtor's request or after having been deemed ineligible to proceed under subchapter V, as well as cases that were administratively closed upon transferring to another division or district. Median disposition times are based on the date that cases entered into subchapter V and may change for each group as remaining pending cases reach their dispositions. Fiscal Year 2024 disposition percentages are not yet included because many cases have not yet reached a disposition. Percentages may not add up to 100 percent due to rounding.


The Winding Road of Bankruptcy
AND ETHICAL HAZARDS TO WATCH FOR ALONG THE WAY
TEAM PARKER
TEAM ROBINSON
TEAM HEIMER
TEAM KING
TEAM KATES
TEAM GARGOTTA

The Winding Road of Bankruptcy

AND ETHICAL HAZARDS TO WATCH FOR ALONG THE WAY



THE ROAD GOES ON FOREVER …

BUT WHEN WILL THE PARTY END?

U.S. SENATE COMMITTEE ON THE

JUDICIARY

LEK TEAMMATES SUBCOMMITTEE

SEPTEMBER 26, 2024

AN INSPECTION OF THE BANKRUPTCY SYSTEM

IS IT TIME FOR REGULAR MAINTENANCE OR A MAJOR OVERHAUL?

U.S. SENATE COMMITTEE ON THE JUDICIARY
LEK TEAMMATES SUBCOMMITTEE

The Road to Nowhere (other than Delaware, New York, or Texas): Is forum shopping a net positive or negative for debtors, creditors, and the bankruptcy system as a whole?

Proposed Legislation: Stop Helping Outcome Preferences Act (the "SHOP Act")
S. 4095. 118th Congress, 2nd Session, April 10, 2024.

A bill to amend title 28, United States Code, to limit the authority of district courts to provide injunctive relief, to modify venue requirements relating to bankruptcy proceedings, and for other purposes.

Sponsor: Senator Fiona Filewright

Witnesses: Cleve Burkeland, Burkeland & Ellis LLP
Professor L. PoLuki

The SHOP Act

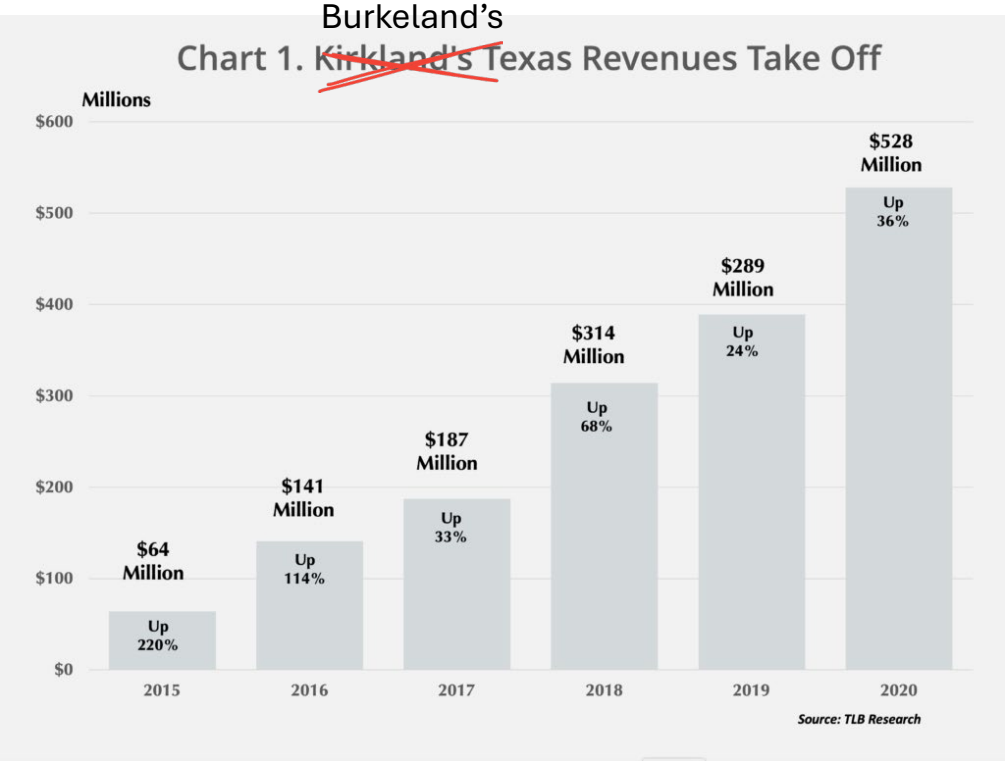
PURPOSE: to prevent practice of forum shopping in bankruptcy cases.

FINDINGS:

Forum shopping :

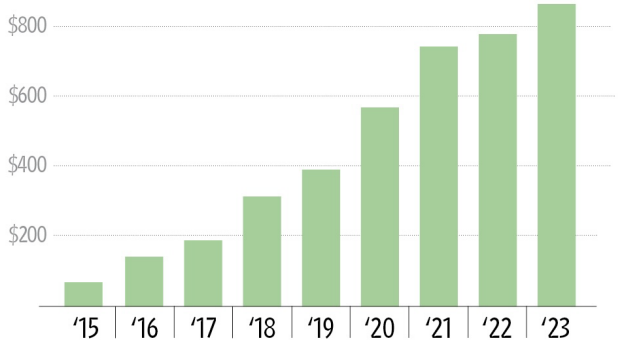
- Results in concentration of cases in few districts.
- Prevents important stakeholders from fully participating in bankruptcy cases that impact their lives, communities, and local economies.
- Precludes diversity of determination among higher courts regarding the development of bankruptcy law in their jurisdictions.

The SHOP Act



SNAPSHOT:
~~KIRKLAND & ELLIS~~
BURKELAND

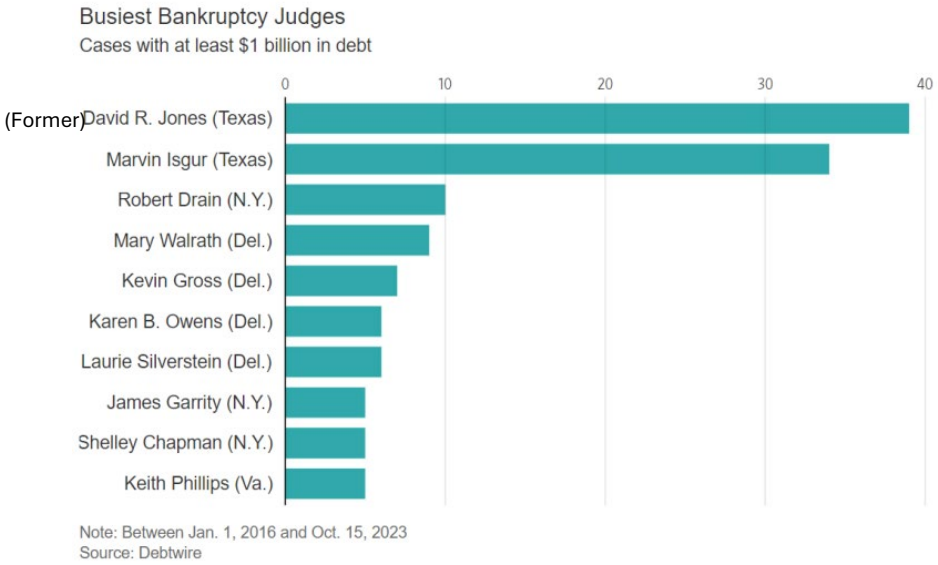
TEXAS REVENUE (in millions)



Burkeland's
~~Kirkland's~~ revenue generated by its Texas lawyers has increased 1,251% over a nine-year period, from $64 million in 2015 to $865 million last year.

SOURCE: Texas Lawbook 50 data

The SHOP Act


Busiest Bankruptcy Judges
Cases with at least $1 billion in debt
0
10
20
30
40
(Former) David R. Jones (Texas)
Marvin Isgur (Texas)
Robert Drain (N.Y.)
Mary Walrath (Del.)
Kevin Gross (Del.)
Karen B. Owens (Del.)
Laurie Silverstein (Del.)
James Garrity (N.Y.)
Shelley Chapman (N.Y.)
Keith Phillips (Va.)
Note: Between Jan. 1, 2016 and Oct. 15, 2023
Source: Debtwire


Houston Bankruptcy Court's Most Active National Law Firms
Cases with at least $1 billion in debt
Burkeland
0
10
20
30
40
Kirkland & Ellis
Weil Gotshal
Latham & Watkins
Paul Weiss
Davis Polk
Sullivan & Cromwell
Akin Gump
Jones Day
Milbank
Paul Hastings
Note: Between Jan. 1, 2016 and Oct. 15, 2023
Source: Debtwire

The SHOP Act

Chapter 11 case may be filed in:

- ~~place of incorporation~~
- location of principal place of business (180+days)
- location of principal assets (180+days)
- district where affiliate has pending case **if the affiliate directly or indirectly owns, controls, or hold at least 50% of equity in or is the GP**

No effect shall be given to:

- change in ownership or control of the debtor or an affiliate
- transfer of principal place of business or principal assets
- Merger, dissolution, spinoff, or divisive merger of the debtor or an affiliate

If such event occurs:

- 1 year before the petition date, or
- For the purpose, in whole or part, of establishing venue.

U.S. SENATE COMMITTEE ON THE JUDICIARY
LEK TEAMMATES SUBCOMMITTEE

King of the Road
Are large businesses improperly manipulating the bankruptcy system? Is it time to close the loopholes?

Proposed Legislation: Ending Corporate Bankruptcy Abuse Act of 2024
S. 4746. 118th Congress, 2nd Session, July 23, 2024

A bill to amend title 11, United States Code, to make the filing of a petition for relief under chapter 11 that is objectively futile or in subjective bad faith a cause for dismissal of the case, and to add limitations to the statutory automatic stay for debtors engaged in the Texas Two-Step.

Sponsor: Senator Tammy Wynott

Witnesses: Lou Polkazar
Dixie Lou Pohl

Ending Corporate Bankruptcy Abuse Act of 2024

The Claim: The "Texas Two-Step" is a recently developed abusive bankruptcy maneuver used by corporations to avoid paying out massive injury claims. The maneuver allows corporations to put their assets out of reach while miring the injury victims in bankruptcy proceedings that drag out for years.

The Proposal:

- Add a statutory presumption that Texas Two-Step filings are bad faith bankruptcies.
- Resolve conflicting case law by making standard for dismissal subjective bad faith or objective futility.
- Abolish automatic stay against non-bankrupt affiliates.

U.S. SENATE COMMITTEE ON THE JUDICIARY
LEK TeamMates Subcommittee

Long Promised Road

Can and should the bankruptcy rules be revised to offer more relief to small businesses and individuals?

Proposed Legislation: Bankruptcy Threshold Adjustment Extension Act
S. 4150. 118th Congress, 2nd Session, April 17, 2024

A bill to amend the Bankruptcy Threshold Adjustment and Technical Corrections Act to extend bankruptcy eligibility requirements for an additional 2-year period.

Sponsor: Senator Anna Turney

Witnesses: Stu Pitt
Formoré D´Etrelief

Bankruptcy Threshold Adjustment Extension Act

Subchapter V	**Traditional Chapter 11**
Lower Cost • No U.S. Trustee's Fees • No Creditor Committees, and No Creditor Comm. Fees	High financial barrier ○ UST Fees based on disbursements ○ Committee Fees
Flexible Confirmation timeline • No competing plans allowed!!! • Plan must be filed in 90 days • No deadline for confirmation • Admin expenses can be paid over 3 -5 years • Confirmation of Plan without consenting creditors	Less Flexible Confirmation timeline ○ 120 days exclusivity period for Debtor to file plan ○ 180-day deadline for confirmation ○ Admin expenses must be paid in full on the Effective Date. ○ At least one impaired class must agree to the treatment of its claim under the Plan
No Absolute Priority Rule !!!	Absolute Priority Rule leads to extensive, expensive negotiations and delay
Policy • Small businesses can repay creditors over 3-5 years and stay in business	Policy ○ Costs most times do not outweigh the benefit resulting in liquidation under Chapter 7 or in State Court

WHERE IS RAY?