



November 1, 2023

**VIA EMAIL ONLY**

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The Honorable Eduardo V. Rodriguez  
Chief Judge  
United States Bankruptcy Court  
Southern District of Texas  
515 Rusk Street  
Houston, TX 77002

Re: Complex Chapter 11 Panel

Dear Judge Rodriguez,

We write in support of the letter dated November 1, 2023 by Clifford J. White III and a group of stakeholders in the bankruptcy process who support the abolishment of the Court’s system of assigning complex Chapter 11 cases to a two-judge panel. Given the national importance of the Southern District of Texas Bankruptcy Court (“SDTX”) in view of the volume of cases pending there, we believe that it is appropriate for the Commercial Law League of America (“CLLA”) to comment.

The CLLA, was founded in 1895, and is the nation’s oldest organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and reorganization. Its membership consists of nearly 1000 individuals. The Bankruptcy Section of the CLLA is made up of bankruptcy lawyers, judges and professionals from virtually every state in the United States. Its members include practitioners with both small and mid-size practices, who represent divergent interests in bankruptcy cases. The CLLA has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable and efficient administration of state-law collection and bankruptcy cases for all parties-in-interest. Members of the CLLA have testified on numerous occasions before Congress as experts in bankruptcy and collections matters, including on bankruptcy venue reform (Representative Lamar Smith, R-TX, held in October 2011).

CLLA has been studying filing trends in large Chapter 11 cases for many years. It recently assisted in submitting an *amicus curiae* to the Supreme Court of the United States in the *Purdue Pharma* case which it argues that the affirmance of the decision of the Court of Appeals for the Second Circuit will encourage more venue and judge shopping of Chapter 11 cases.

Ironically, the creation of a small complex Chapter 11 Panel actually encourages not only forum shopping but also its pernicious corollary, judge shopping, where debtors are able to self-select specific judges with expectations of favorable outcomes in their cases. As the *National Bankruptcy Review Commission* stated in its Final Report (1997), the appearance of venue manipulation undermines public confidence in the bankruptcy system (pp. 778-779). A concern reiterated by former Bankruptcy Judge Steven Rhodes, who presided over Detroit's bankruptcy case, wrote in the *Wall Street Journal* in 2015, that current venue law is "the single most significant source of injustice in Chapter 11 bankruptcy cases." In our view, the SDTX would be wise to abolish its Chapter 11 Panel in favor of a random assignment system. Parties should not be able to choose their judge.

Moreover, reinstating random selection is only a first step. The CLLA also believes the larger issue of bankruptcy venue reform needs to be addressed to reinforce the impartiality of our uniform national bankruptcy system.

The problem is a loophole in 28 U.S.C. §1408 that allows companies filing Chapter 11 to flee their home states and file bankruptcy in remote jurisdictions based primarily on the entities' or their affiliates' state of incorporation. In February 2023, Representatives Lofgren (D-CA) and Buck (R-CO) introduced a solution to the problem of rampant bankruptcy forum shopping -- H.R. 1017. This re-introduced bipartisan bill will require corporate debtors to file where they have their principal place of business or principal assets. If passed, and enacted, companies will have to file bankruptcy where they have their headquarters. Debtors will no longer be able to unilaterally choose the jurisdiction or the judge they perceive as friendly. Instead, competent bankruptcy judges assigned randomly, would oversee the reorganization of companies in their own communities.

In conclusion, having Chapter 11 cases filed and handled where the debtor has its principal place of business and heard by randomly assigned judges would be a tremendous step toward restoring confidence in the bankruptcy system. The abolishment of the Chapter 11 Panel in the SDTX would be the right policy and an important message to the country.

Respectfully Submitted,

Peter C. Califano  
Governmental Affairs Committee  
Commercial Law League of America

cc: Clifford J. White III (via email)