

Bankruptcy Legislation

NACM

March 16, 2023

Rolling Meadows, IL

Ron Peterson

Jenner & Block

Agenda

- Venue
- Education Loans
- Third Party Releases and the Texas Two-Step
- Sub Chapter V
- Stop the Steal
- Consumer Reforms

Venue

- 28 U.S.C. § 1408 provides that a debtor can file in any of the following federal districts:
 - 1. Domicile
 - 2. Residence
 - 3. Principal Place of Business
 - 4. Principal Place where assets are located

Gourmet Venues

- Delaware
- Southern District of New York
- Southern District of Texas

Honorable Mentions:

- Eastern District of Virginia, Eastern District of Nevada, and the District of Arizona.

Proposal

- For entities other than individuals, eliminate residence or domicile.

Pros of the Proposal

- Force businesses to file in home districts.
- Local courts have more time to devote to large cases than Delaware courts do.
- Local courts may look on labor and trade creditors in a more friendly manner.

Cons of the Proposal

- Delaware, Texas and New York bankruptcy judges have developed an expertise in handling large cases.

Venue Part #2

- 28 U.S.C. 1409 requires a trustee to bring an action arising in or related to a Title 11 case only in the district in which the defendant resides if the judgment sought is less than \$27,500.
- However, if the action arising under Chapter 11 – preferences and fraudulent transfers, the action can be brought in the Debtor's home court.
- Statute should be amended to include matters arising under Title 11.

Education Loans

There is Trouble in River City—and It's Not a Pool Hall

- 11 U.S.C. § 523 (a) (8) does not permit a debtor to discharge an education loan in bankruptcy *unless*:
 1. The Debtor is unable to repay the loan;
 2. The impairment is likely to persist; and
 3. The debtor has made a good faith effort to repay the debt.

Result: Virtually all education loans are non dischargeable.

Education Loans

Types:

1. Loans made by or guaranteed by the federal government
2. Educational Benefits
3. Certain Private Loans

Solutions?

1. Restore the old seven-year proviso.
2. Allow guarantors to discharge education loans.
3. Permit private Loans to be discharged.
4. Punish schools who make loans that the student can never repay.
5. Offer more government programs that would allow students to work off their loans.
6. Review how loans are disbursed.

Third Party Releases

11 U.S.C. § 524(e)

Except as provided in subsection (a)(8) (Asbestos Cases) discharge of a debt does not affect the liability of any other entity, or the property of any other entity.

Solutions

- 1 Elizabeth Warren Approach: ban all third party releases.
2. Allow third-party releases if the Court conducts a rigorous evidentiary hearing and finds that the Releases are:
 - A. Necessary for an effective reorganization
 - B. The Creditors approve the plan by a super majority
 - C. Released parties making a reasonable contribution commensurate with the value of the release
 - D. The creditors would get a greater recovery under the plan than they would in civil litigation.

Texas Two-Step

- Corporation with large tort liability makes a divisive split up. One entity contains the old assets and non-tort liabilities of the original entity, and the other company receives all of the tort liabilities.
- The company with the assets guarantees the debts of the company with the liabilities.

Advantages

- Unsecured creditors are not affected by the bankruptcy process and can continue on with business as usual.
- The tort system in the United States is broken.

Sub Chapter V

- Small Businesses. Liabilities capped at \$7.5 MM>
- No absolute priority rule
- No voting
- Plan must be feasible and the debtor's best efforts
- Trustee is a mediator and administrator-- Trustee does not sue anyone
- No creditors committee
- Short time frame
- A subchapter V is a mediation
- Not as expensive as a chapter 11 and has a higher survival rate

Elizabeth Warren's *Stop Wall Street Looting Act*

1. Very labor protective.
2. Punishes hedge funds
3. Prevents buy and burn.

New Chapter 10

- Affects only consumer debtors
- Allows the debtor to file plans to deal with just one set of creditors
- Eliminate the Trustee in most cases
- Eliminates Chapter 13
- Affects mortgages on homes
- Mandates that 341 meetings be held via Zoom