False Venue Claims Signed Under Penalty of Perjury

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INTRODUCTION

In a study of venue for the one hundred ninety-five large, public company bankruptcies filed from 2012 through 2021, I discovered nine cases (5%) in which the companies' venue claims were in apparent conflict with what the debtors themselves stated on their petitions to be the locations of the companies' principal places of business and principal assets (the False Venue Claim Cases). Eight of the nine cases proceeded to confirmation in an improper venue.

Although it is routine for large, public companies and the courts in which they file to ignore the Bankruptcy Code and Rules,[1] these nine cases take Chapter 11's lawlessness to a new level. Top officers of large, public companies, with the advice of counsel, signed apparently false venue claims under penalty of perjury.

This Article analyzes the nine cases and concludes that (1) no apparent basis for the venue claims in seven of the nine cases exists, and (2) the apparent basis for the venue claims in one of the other two cases is both legally implausible and in conflict with the relevant facts stated in the petitions.[2] In only one of the nine cases was the debtor entitled to file in the district in which it filed.

This Article does not accuse anyone of perjury or subornation of perjury. A person is guilty of perjury only if the person "knowingly and fraudulently makes a false declaration."[3] I make no claim to know the states of mind of the persons who signed the petitions. This Article addresses only the apparent falsity of the declarations they signed and the circumstances in which they signed them. That said, I find it hard to believe that none of the officers who signed under penalty of perjury knew that the statements they signed were false.

False venue claims are unnecessary. Before they file, big corporate debtors can easily create facts that, on a literal reading of the venue statute, qualify them for venue in their chosen courts. The bankruptcy venue statute is notoriously lax. 28 U.S.C. § 1408 provides in relevant part that a bankruptcy case:

> may be commenced in the district court for the district—

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[1] Lynn M. LoPucki, *Chapter 11's Descent into Lawlessness*, 96 AM. BANKR. L.J. 247 *seriatim* (2022).

[2] In Rex Energy, the debtors corrected their venue hook's petition by amendment and the court found venue based on the corrected petition. In Jason Industries, Inc., one of the lawyers for the debtors informed me that the petition mistakenly indicated the debtor's principal assets were in Milwaukee and argued that the debtor had principal assets in White Plains even though most of the assets were not in White Plains.

[3] 18 U.S.C. § 152.

> (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or
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> (2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

The statute allows an entity to file in its choice of four districts: (1) the entity's principal place of business, (2) the entity's principal assets, (3) the entity's domicile, or (4) where the case of an affiliate is pending.

Because a large, public company typically is composed of several entities, each with four bases for venue, some group member may coincidentally be eligible to file in the company's preferred court. If no group member is eligible to file in the preferred court, the group can create a new member that is eligible to file there, assign some debt to it, and put it into bankruptcy there. Alternatively, a group member that has only nominal assets—a bank account or stock certificates—can move those assets to the preferred district—by instructing the bank to transfer the account to the bank's branch there or putting the stock certificates in a safe deposit box there and waiting ninety days before filing. Once that entity files, the rest of the group is entitled to file in the same district because "there is pending a case … concerning the case of an affiliate" in that district.[4] Entities that file first to establish the right of other group members to file in the district are referred to as "venue hooks"[5] and the process of creating or modifying venue hooks on the eve of bankruptcy is referred to as "manufacturing venue."[6]

At least two possible explanations exist for the false venue claims. The first is that they are merely clerical errors. One of the nine, Rex Energy, is clearly a clerical error and another, Jason Industries, appears to be. However, given the 5% (9 of 195 cases) error rate and the salience of venue in big case bankruptcy, I doubt that clerical errors can provide a complete explanation. Corporate officers would have known where their companies were located and should have noticed they were not filing there. A more likely explanation is that the lawyers, and hence their clients, were aware that the courts in which they were filing would not enforce the venue statute and rules. That the company lacked any basis for venue did not matter, so it wasn't necessary to reconcile the venue claim with the facts in the petitions on which the claims were based. Filers who realized they could easily have manufactured a basis for venue may have been reluctant to do so, not out of fear that the

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[4] 28 U.S.C. § 1408(2).

[5] Lynn M. LoPucki & William C. Whitford, *Venue Choice and Forum Shopping in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 1991 Wis. L. Rev. 11, 22 (1991) (reporting that lawyers interviewed referred to the first petition filed in a court as the "venue hook").

[6] *In re* AmeriFirst Fin., Inc., 2023 WL 7029873, at *4 (Bankr. D. Del. Oct. 25, 2023) (discussing "manufactured venue").

case would be transferred, but out of fear that the media would discover the manufacture, resulting in bad publicity for everyone involved.[7]

This Article examines the nine False Venue Claim Cases. In each, the petitions showed on their faces that the principal places of business and principal assets of the entities were not in the districts where the debtors filed at the time they filed. Public records showed that the entities were not incorporated in the states where they filed, so the entities were not domiciled in those states. Aside from clerical error, there remained only the possibility that, although the principal places of business and principal assets of the entities were not in the chosen district at the time of filing, one of them had been in the chosen district for more of the 180 days preceding bankruptcy than it had been in any other district. That is, the principal place of business or the principal assets had been in the chosen district during the 180-day period but had been moved out of that district before filing. Although I consider move-outs highly unlikely, we[8] researched that possibility in each of the cases. We found no evidence that any move-outs had occurred, but we could not prove the negative—that no move-outs had occurred among the cases studied. For that reason, I refer to the false venue claims discussed in this Article as "apparent."

I sent a draft of this Article to each lawyer and, if I had not yet heard from the lawyer, each officer who signed one or more petitions in the False Venue Claims cases. In an accompanying letter, I asked the lawyer or officer to let me know of any basis for venue in the case and furnish me with any conveniently available evidence. A lawyer in Rex Energy pointed out to me that Rex amended its venue hook's petition about eight hours after filing the petition. I had already determined from public records that Rex Energy's venue hook was probably eligible to file where it did. I concluded that the error in that case was inadvertent. A lawyer in Jason Industries argued to me that venue was proper on the theory that an entity's "principal assets" could be in more than one district. A lawyer in Stone Energy pointed out that the judge was aware of the venue issue before the First Day Hearing and mentioned that the judge had changed "proper venue" to "allowed venue" in some documents because he did not "know if this is the best venue."[9] That judge also used "allowed venue" in the confirmation order.[10]

The nine False Venue Claim Cases analyzed in this Article are almost certainly a minority of the total number of False Venue Claim Cases. I was able to identify the nine and study them systematically only because I had for decades maintained a database of large, public company bankruptcies. In recent years, most big bankruptcies filed in the

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[7] *E.g.*, Nicholas Cordova, Bankruptcy Venue Reform, Harvard Bankruptcy Roundtable, May 20, 2020 (reporting letter from 40 State Attorney Generals to Congress supporting venue reform because it would prevent manufactured venue); Joan Feeney, Adam Levitin, Steven Rhodes & Jay Westbrook, *Now is the Time for Bankruptcy Venue Reform*, THE HILL (Aug. 6, 2021, 6:30 PM) https://thehill.com/blogs/congress-blog/judicial/566729-now-is-the-time-for-bankruptcy-venue-reform/ (criticizing the bankruptcy filings of The Boy Scouts of America and the National Rifle Association for manufactured venue).

[8] "We," as used in this Article, refers to myself, Douglas Irion (manager of the Florida-UCLA-LoPucki Bankruptcy Research Database) and my research assistants.

[9] First Day Hearing Transcript, at 69, In re Stone Energy Corporation, No. 23-90085 (S.D. Tex. Dec. 16, 2016), ECF No. 130.

[10] *Infra* note 99 and accompanying text.

competing courts have been those of private companies.[11] The possible explanations for the False Venue Claim phenomenon apply equally to those private companies. That suggests the existence of more than nine big bankruptcy false venue claim cases in addition to those identified in this study.[12]

Part I of this Article explains the context in which the False Venue Claim Cases occurred. A small number of bankruptcy courts are competing to attract big cases. The competing courts attract them by favoring, in their policies and decision making, the parties who brought the cases to them. Part II describes the state of venue reform—a bill stuck, seemingly perpetually, in Congress, and a series of bankruptcy rule amendments designed to get bankruptcy judges to respond to improper venue. Part III explains the study design, the data gathering methods, the statutory interpretations on which the study is based, and the law governing bankruptcy petition perjury, subornation of that perjury, and fraud on the court. Part IV describes and analyzes the facts of the nine cases, applies the law, and concludes that only one, Rex Energy, had any apparent factual or plausible legal basis on which to claim venue in the district it chose. Part IV also describes six additional cases in which large, public companies located in the Northern District of Texas filed in the Southern District of Texas on the implausible legal theory that every Texas entity has four domiciles—one in each federal district in Texas—and is entitled to file in any of them.[13] Part IV also briefly explores the strange phenomenon of filers claiming affiliate venue in districts in which none of their affiliates had yet filed.

Part V analyzes the responsibility of the three principal participants in the false venue claim phenomenon—the corporate officers who sign the petitions, the lawyers who sign the petitions, and the judges who find venue based on the petitions. It concludes that the lawyers and judges were the main culprits even though the officers were the ones who signed under penalty of perjury. Part VI concludes that court competition is the root cause of the false venue claim phenomenon, and that the competition has severely damaged the integrity and reputation of the bankruptcy system.

I. THE COURT COMPETITION CONTEXT

False-venue-claim bankruptcies are, almost certainly, a product of bankruptcy court competition for big cases. Big bankruptcies are highly concentrated in a small number of courts that compete for them. The courts compete by offering advantages to the case placers—the debtors' managers, lawyers, and DIP lenders who have the power to direct cases to the court. Those advantages include interpretations of the law and the exercise of discretion in the case placers' favor. They also include the failure to enforce Bankruptcy

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[11] Cornerstone Research, Trends in Large Corporate Bankruptcy and Financial Distress: Midyear 2023 Update, at 1, https://www.cornerstone.com/wp-content/uploads/2023/09/Trends-in-Large-Corporate-Bankruptcy-and-Financial-Distress-Midyear-2023-Update.pdf (figure showing 16 $100 million public company bankruptcies in 2022 as compared with 35 $100 million private companies).

[12] For example, Belk, Inc., filed in the Southern District of Texas in 2021 had no apparent basis for venue in that district. *Supra* note 1, at 255-56.

[13] *See infra,* Part II.C.2.

Code and Rule provisions designed to protect parties other than the case placers. The result has been a transformation of the bankruptcy process as it operates in big cases.

A. The Concentration of Big Cases

The headquarters of bankrupt large, public companies are dispersed widely across the United States,[14] but their bankruptcy cases are concentrated in a handful of courts. In the eight most recent years for which data are available—2015 through 2022— of the 209 large, public company bankrupts (87%) were filed in just five of the approximately 200 divisions of the bankruptcy courts.[15] Those five divisions were Wilmington, Houston, Manhattan, Richmond, and White Plains.[16] The concentration of large, public company cases was visible as early as the 1980s, the era in which large, public company bankruptcy began.[17] It increased steadily over time.[18] Bankruptcy scholars agree that these concentrations are the product of forum shopping and that the venue statute, read literally, authorizes the forum shopping.[19]

B. Bankruptcy Court Competition

Scholars disagree on the role judges play in concentrating the cases. Some deny that "any bankruptcy judges make rulings for reasons other than that which is supported by fact and law."[20] But despite the political cost of saying so, a growing number agree with me that the so-called "magnet" bankruptcy courts are competing to attract big cases in ways

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[14] FLA.-UCLA-LOPUCKI BANKR. RSCH. DATABASE, (https://lopucki.law.ufl.edu/design_a_study.php?OutputVariable=Shop (last visited Nov. 12, 2022), [https://perma.cc/7CKD-ZL5P] [hereinafter BRD] (One-click study, Headquarters city, showing 1,218 bankrupt large, public companies headquartered in 163 U.S. cities).

[15] *Id.* (One variable study, Step 1, Choose Venue by City. Step 2, Limit cases included to Filings by year, choose years 2015-2022, Venue by City, choose Venue cities Wilmington, New York, White Plains, Houston, and Richmond).

[16] Levitin identifies the same courts as "dominat[ing] the competition for large cases." Adam J. Levitin, *Judge Shopping in Chapter 11 Bankruptcy*, 2023 U. ILL. L. REV. 351, 412.

[17] LoPucki & Whitford, *supra* note 5, at 29 (1991) (finding a concentration of cases in the Manhattan Division of the Southern District of New York).

[18] LoPucki, *supra* note 1, at 257 (graph showing an increasing concentration from 2011 through 2020).

[19] *E.g.*, Anthony J. Casey & Joshua C. Macey, *Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars*, 37 EMORY BANKR. DEV. J. 463, 465, 470 (2021) ("These lenient venue selection rules long have allowed bankruptcy courts in the District of Delaware and the Southern District of New York to dominate the market for large chapter 11 cases," and that "recently the Southern District of Texas has also begun to attract a large number of cases.").

[20] Terrence L. Michael, Nancy V. Alquist, Daniel P. Collins, Dennis R. Dow, Joan N. Feeney, Frank J. Santoro & Mary F. Walrath, *NCBJ Special Committee on Venue: Report on Proposal for Revision of the Venue Statute in Commercial Bankruptcy Cases*, 93 AM. BANKR. L.J. 741, 776 (2019); *but see* Hon. Robert D. Martin, Comments, 54 Buff. L. Rev. 503, 504 (2006) ("Certainly [LoPucki] is correct that decisions have been made which are not well founded in law and which are beneficial to debtors or, as he calls them, 'case placers.'").

that undermine the integrity of the chapter 11 process.[21] This is how Professor Adam Levitin described the competition:

> In order to attract megacases, judges have to accommodate the case placers, first and foremost, debtor's counsel. This means accommodating them in terms of mundane matters like scheduling and fee applications, but also in terms of ruling in favor of the debtor on all key issues in the cases or making clear that certain types of motions, particularly examiner motions or motions to disqualify debtor's counsel, will not be granted, such that creditors will not even bother filing them.[22]

The competing judges do not admit they are competing for cases. But the Wall Street Journal reported that in 2015, U.S. Bankruptcy Judge David R. Jones "contacted a couple of the top bankruptcy partners at Kirkland & Ellis, the nation's leading law firm for advising troubled companies, seeking to encourage them to file cases in Houston."[23] To prove that a specific decision was motivated by competition is nearly impossible. My case that judges change their decisions in their efforts to compete is made statistically. I prove large numbers of legally doubtful decisions, all in favor of the case placers.[24]

The competition is easiest to see with respect to the failure to transfer cases. Case placers do not tolerate transfers of their cases because transfers would not only deny them the benefits that motivated them to forum shop, but also would send the case placers back to the very judges the case placers were trying to escape. The consequences of transferring a big case are illustrated by (1) the rapid decline in big case filing in New York after a New York bankruptcy judge transferred the *Patriot Coal* case in 2012[25] and (2) the complete absence of big case transfers since. Since *Patriot Coal*, "one hundred and ninety-three voluntary, [large, public company] Chapter 11 cases have been filed in courts away from the companies' principal executive offices and disposed of by plan confirmation, conversion, or dismissal. Not a single one has been transferred back prior to its disposition."[26] The reason is simple. Competing courts do not enforce the venue statutes and non-competing courts don't get cases to begin with.

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[21] *E.g.*, Daniel B. Kamensky, *The Rise of the Sponsor-in-Possession and Implications for Sponsor (Mis)Behavior*), 171 U. PA. L. REV. ONLINE 19, 37 (2024) ("Competition among these venues has led to fundamental and detrimental changes to the bankruptcy system."); *id.* at 38 ("With its hand-selected Judge in charge, Ares could be sure its chosen counsel, even if conflict-ridden, would not be disqualified."); Levitin, *supra* note 16, at 412 ("Judge shopping has combined with competition for cases to undermine the integrity of the chapter 11 process.").

[22] Levitin, *supra* note 16, at 354.

[23] Alexander Gladstone & Andrew Scurria, *Criminal Probe of Ex-Judge Examines Bankruptcy Advisers Who Practiced in His Court*, WSJ PRO (Oct. 9, 2024).

[24] *See, e.g.*, LoPucki, *supra* note 1, at 300-09 (citing or presenting several such studies).

[25] New York's market share of large, public company filings fell from 33% in 2012 to 8% the following year. *Id.* at 257.

[26] *Id.* at 304.

The aversion to transfer is illustrated in the recent case of Sorrento Therapeutics, Inc. In February of 2024, the United States Trustee moved to transfer or dismiss the case, alleging:

> Until the day before they filed their bankruptcy cases in this Court, neither of the Debtors—Sorrento Therapeutics, Inc. ("Sorrento") and its wholly-owned subsidiary, Scintilla Pharmaceuticals, Inc. ("Scintilla")—had any known connection with the Southern District of Texas. That afternoon, a newly named partner at Jackson Walker, LLP, Debtors' bankruptcy counsel ("Jackson Walker"), visited a UPS Store in the Houston suburbs, where she rented a mailbox in Scintilla's name. Early the next morning, just after midnight, Scintilla filed a chapter 11 bankruptcy petition that represented that the UPS Store was both its "principal place of business" and the location of its principal assets.... In addition, Scintilla represented that it had maintained a principal place of business or its principal assets within the Southern District of Texas for the prior 180 days or for a longer portion of such 180 days than in any other district. None of these representations were true.[27]

When a case is filed in an improper venue, Bankruptcy Rule 1014 and 28 U.S.C. § 1406(a) give the court only two options: dismiss or transfer.[28] The court in *Sorrento* did neither. It held Sorrento's venue proper[29] and the United States Trustee's motion untimely.[30] The case continued in Houston.

Judges who want to attract or retain big cases may want them for several reasons. Presiding over big cases is prestigious and intellectually challenging.[31] Those who do it

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[27] United States Trustee's Motion to Transfer Venue or Dismiss at 2, *In re* Sorrento Therapeutics, Inc., et al., No. 23-90085 (S.D. Tex. Feb. 16, 2024), ECF No. 1879.

[28] 28 U.S.C. § 1406(a) (2023) ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."); H.R. Rep. No. 94-1373, at 3 (1976) ("Under the new section 1406(a), the district court has only two options when faced with a case filed in the wrong division or district: it must either dismiss the case or transfer it to a district or division in which the case could have been brought. The option of retaining the case is not available."). *In re* Skelton, 2018 WL 1054099, at *3 (Bankr. N.D. Ga. Feb. 23, 2018) ("The majority of courts, however, hold that a bankruptcy court may dismiss a case filed in an improper venue or transfer it to a court where venue is proper but cannot retain a case in a venue that is improper."); Matter of Asanda Air II LLC, 600 B.R. 714, 723 (Bankr. N.D. Ga. 2019) ("As a general matter, a court cannot retain an improperly "venued" case. . . [O]nce a determination of improper venue is made, transfer or dismissal is mandatory." *In re* Houghton Mifflin Harcourt Publ'g Co., 474 B.R. 122, 124-25 (Bankr. S.D.N.Y. 2012).").

[29] Motion to Transfer or Dismiss (Transcript) at 214, Doc. 2049, *In re* Sorrento Therapeutics, Inc., case no. 23-9085, Bankruptcy Court for the Southern District of Texas [hereinafter *Sorrento* Transcript] ("I have in evidence, a $60,000 bank account, a PO Box that's listed and no one's questioning. I think venue is proper under 1014 based on the facts. Based upon the evidence that's been presented to me.").

[30] *Id.* at 208 ("Here, I find that both motions are not timely, and that the argument for venue has been waived for a number of reasons.").

[31] *See, e.g.*, Merritt E. McAlister, *White-Collar Courts*, 76 VAND. L. REV. 1155 (2023) (noting in an analogous context that "[I]t is not the pay, or the retirement benefits, or probably even the job security that draws highly

become celebrities, at least within the bankruptcy community.[32] A judge who brings big cases to the district provides high-paying work to local bankruptcy professionals. For most judges, those professionals are their friends, the people who elevated them to their judgeships, and the people who will determine whether they are reappointed.[33] Delaware competes to enhance and solidify its lucrative near monopoly on big company incorporation and to bring judgeships to the state.[34] Lastly, judges and the media regard the courts that attract cases as "better" than those who do not.[35] A judge who refuses to compete for cases on legal and moral grounds faces the embarrassment of rejection by the large law firms supposedly choosing the "best" courts in which to bring cases.[36]

C. The Dynamic of Court Competition

The evidence that some bankruptcy courts compete for big cases is overwhelming.[37] The failure to transfer big cases has already been discussed.[38] The Bankruptcy Code and Rules require that bankruptcy judges approve professional fees, but the competing courts routinely fail to comply,[39] and in some recent cases have failed even

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qualified applicants to seek Article III appointments. It is the rewards—and the power, responsibility, and prestige—of the work.").

[32] Levitin, *supra* note 16, at 365 ("[B]ecause the judge is the star and the ringmaster of a megacase, presiding over such a bankruptcy might be appealing to personalities seeking a captive audience and a type of celebrity within the bankruptcy world. Likewise, judges who themselves come from big case chapter 11 practices are likely to want to deal with their "peer" bar of big case chapter 11 lawyers, rather than the less fancy lawyers who handle the bankruptcies of consumer or small businesses."); Marcus Cole, *"Delaware Is Not A State": Are We Witnessing Jurisdictional Competition in Bankruptcy?*, 55 VAND. L. REV. 1845, 1875 (2002) ("Almost all of the [interviewed] judges suggested that there is a level of prestige and satisfaction that attaches to hearing and deciding important cases. Some of the judges used the term 'psychic income' to refer to this prestige and satisfaction.").

[33] *See, e.g.*, LYNN M. LOPUCKI, COURTING FAILURE: HOW COMPETITION FOR BIG CASES IS CORRUPTING THE BANKRUPTCY COURTS 19-24 (2005) (explaining the reasons why judges compete).

[34] Since Delaware began competing for cases in 1990, the number of bankruptcy judgeships in the state has increased from one to eight. *See* U. S. Bankruptcy Court for the District of Delaware, https://www.deb.uscourts.gov/ (listing nine judges under "Judge's Info").

[35] *E.g.*, Michael et al., *supra* note 20, at 744 (defining "the bankruptcy courts for the District of Delaware and the Southern District of New York" as the "magnet courts"); Alexander Gladstone, Andrew Scurria & Akiko Matsuda, *Judge's Girlfriend Profited in His Federal Court*, WALL ST. J., June 21, 2024, at A1, A9 (describing the deposed bankruptcy judge as having "worked to elevate Houston's bankruptcy court to the national top tier").

[36] LOPUCKI, *supra* note 33, at 23 (noting that lawyers malign the judges who lose the cases to other districts as "toxic judges").

[37] *See supra* text accompanying note 17 and cited material; LoPucki, s*upra* note 112, at 267-96 (presenting the evidence of lawlessness in *Belk*); LOPUCKI, *supra* note 33, at 137-81 (2005) (describing the evidence that bankruptcy courts are being corrupted).

[38] *Supra* text accompanying notes 25-26.

[39] Lynn M. LoPucki & Joseph W. Doherty, *Routine Illegality in Bankruptcy Court, Big-Case Fee Practices*, 83 AM. BANKR. L.J. 423 (2009) (empirical study showing that the U.S. bankruptcy courts routinely authorize and tolerate professional fee practices that violate the Bankruptcy Code and Rules."); Lynn M. LoPucki & Joseph W. Doherty, *Routine Illegality Redux*, 85 AM. BANKR. L.J. 35 (2011) (replying to four Dewey & LeBoeuf lawyers who tried to argue the legality of the practices).

to require that the professionals file fee applications.[40] Judges have confirmed prepackaged plans as little as seventeen hours after the case is filed—despite a Bankruptcy Rule requiring the court to give 28 days' notice of a confirmation hearing.[41] Judges have released the professionals who worked in the cases from liability for their wrongdoing.[42] Judges fail to require the appointment of creditors' committees as required by law.[43] Instead, they allow so-called "independent directors" supplied by debtors' counsel to make the insolvent debtors' decisions.[44] Judges not only allow the managers who ran their companies into bankruptcy to remain in office, they approve bonuses for them.[45] Judges approve plans even though they provide for "support fees" payable only to creditors who vote yes on the plan.[46] Judges excuse the filing of schedules in increasing numbers of cases—leaving creditors without the most basic information.[47] Judges fail to require ad hoc committees and groups posing as creditor representatives to reveal who they are despite an unambiguous rule requiring that they do so.[48] Judges allow debtors to borrow large amounts of money on draconian terms and then order the terms sealed.[49] Judges allow

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[40] Robert K. Rasmussen & Roye Zur, *The Beauty of Belk*, 97 AM. BANKR. L.J. 438, 471 (2023) (acknowledging that no fee applications were filed in the Belk one-day chapter 11).

[41] LoPucki, *supra* note 1, at 248-49 (describing the speed of the Belk case). Adam J. Levitin, *Purdue's Poison Pill: The Breakdown of Chapter 11's Checks and Balances*, 100 TEX. L. REV. 1079, 1100 (2022) at 1100 ("Faster confirmation timelines in prepackaged plans deprive creditors of the ability to organize opposition to an unfavorable restructuring.").

[42] *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 655 (E.D. Va. 2022) ("The sheer breadth of the releases can only be described as shocking. They release the claims of *at least* hundreds of thousands of potential plaintiffs not involved in the bankruptcy, shielding an incalculable number of individuals associated with Debtors in some form, from every conceivable claim — both federal and state claims — for an unspecified time period stretching back to time immemorial."); LoPucki, *supra* note 1 at 294 (describing the court's efforts to grant releases in Belk).

[43] *Id.* at 289 ("From 2011 to the present . . . United States Trustees in the five competing courts were almost five times as likely as those in noncompeting courts to fail to appoint a committee to represent the unsecured creditors.").

[44] Jared A. Ellias, Ehud Kamar, & Kobe Kastiel, *The Rise of Bankruptcy Directors*, 95 S. CAL. L. REV. 1083, 1083 (2022) ("While these directors claim to be neutral experts that act to maximize value for the benefit of creditors, we argue that they suffer from a structural bias because they often receive their appointment from a small community of repeat private equity sponsors and law firms.").

[45] LoPucki, *supra* note 1, at 301 (noting the competing courts' failure to control bonuses even in response to legislation directing them to do so).

[46] David A. Skeel, Jr., *Distorted Choice in Corporate Bankruptcy*, 130 YALE L.J. 366, 369 (2020) ("These inducements, which are available only to those who [commit to vote for the plan], look like a form of vote buying, since they compensate signatories who commit to supporting an upcoming plan.").

[47] LoPucki, *supra* note 1, at 284-85 (empirical study showing Delaware led a dramatic reduction in the frequency of filing schedules).

[48] *Id., at 268*-69 (describing the court's failure to require the ad hoc groups to reveal the identities of their members).

[49] Kenneth Ayotte & Jared A. Ellias, *Bankruptcy Process for Sale*, 39 YALE J. ON REG. 1 (2022) ("[O]ver the past three decades, DIP lenders have steadily increased their contractual control of Chapter 11."); Frederick Tung, *Financing Failure: Bankruptcy Lending, Credit Market Conditions, and the Financial Crisis*, 37 YALE J. ON REG. 651, 705 (2020) ("The distortive effects of roll-ups on plan negotiation make [the banned practice of] cross-collateralization seem mild.").

debtors to favor some unsecured creditors over others as "critical vendors"—thus giving debtors near absolute power over their unsecured creditors.[50] Judges rarely appoint examiners to investigate wrongdoing,[51] and they fail to appoint Chapter 11 trustees in even the most egregious cases of fraud.[52] If courts don't do these things for them, the case placers take later cases to courts that will.[53]

D. The Bankruptcy System's Transformation

These changes, made over four decades, have transformed the big case bankruptcy process to lawlessness.[54] All the changes have favored the case placers. In a competition to attract case placers, changes favoring case placers are the only kind of changes that *could* occur. If a court ruled against the case placers on an issue of importance, the case placers would not bring future cases to that court.[55] The resulting change in the law would not apply to any big cases because the case placers would not file any in that court. The abandonment of the rule of law in large, public company bankruptcy has been shielded from reversal on appeal by the increasing speed with which the cases are processed,[56] the broad discretion of the bankruptcy courts, and the equitable mootness doctrine.[57]

False venue claims are consistent with court competition, in that both are lawless. But court competition is driven by case placers seeking advantage for themselves or their clients. By making false venue claims, case placers take a risk, however small. The

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[50] LoPucki, *supra* note 1, at 307-08 (describing the dynamic).

[51] Jonathan C. Lipson & Christopher Fiore Marotta, *Examining Success*, 90 AM. BANKR. L.J. 1, 26 (2016) ("Chapter 11 trustees were appointed in twenty-four [out of 658] (3.6% of) large cases."); *Id.*, at 4 (2016) ("[E]xaminers were appointed in forty-three [out of 661] (6.5% of) large cases.").

[52] LoPucki, *supra* note 33, at 14 (describing the New York bankruptcy court's failure to appoint a trustee in the Enron case).

[53] Ronnie Greene, James Nani, and Umar Farooq, *How Kirkland Uses Court Shopping to Get an Edge in Bankruptcy*, Bloomberg Law, Aug. 6, 2024) ("When rulings don't go in its favor or controversy erupts in courts where Kirkland has been a steady presence, it often stops taking its business there and brings new cases elsewhere, a Bloomberg Law analysis of its court filings shows.").

[54] Levitin, *supra* note *supra* note 16, at 354 ("Judge shopping has combined with the competition for megacases to transform the chapter 11 world."); LOPUCKI, *supra* note 33, at 180 (referring to the "competition-driven changes have transformed the landscape of American bankruptcy over the period since 1990").

[55] Levitin, *supra* note 16, at 414 ("The implicit message: if you do not approve this case, future cases will go to other jurisdictions.").

[56] For example, the plan in Belk was confirmed and consummated on the day after it was filed. Reversal on appeal could not undo the consummation because money and property had been exchanged by hundreds of parties. LoPucki, *supra* note 1, at 249.

[57] *E.g.*, Bruce A. Markell, *The Needs of the Many: Equitable Mootness' Pernicious Effects*, 93 AM. BANKR. L.J. 377, 379–80 (2019) ("The judge-made doctrine of equitable mootness allows appellate courts to dismiss meritorious appeals in order to preserve the expectations of the other participants in the reorganization."); Levitin, *supra* note 41, at 1122 ("This Part examines the reasons that appellate review is often absent in bankruptcy: statutory limits on appellate remedies; appellate courts' resistance to second-guessing the technical, fact-based nature of valuation opinions; the costliness of delay while appeals are pending; the requirement of the entry of a final order before an appeal may be taken; and the doctrine of equitable mootness.").

advantage gained by it is not obvious, making it difficult to explain. As previously noted, I think the most likely explanations are (1) carelessness in the face of an unenforced statute and (2) fear of adverse publicity from manufactured venue.

II. THE STATE OF VENUE REFORM

Since rampant big bankruptcy forum shopping emerged in the 1980s, U.S. Senators and Representatives have periodically introduced bankruptcy venue reform bills. Also, members of the Bankruptcy Rules Committee have periodically amended Bankruptcy Rule 1014 to promote the transfer or dismissal of cases filed in improper venues. Both efforts were directed against big bankruptcy forum shopping and neither has succeeded.

A. 28 U.S.C. § 1408

In 2005, Senator John Cornyn (R-Tex) nearly succeeded in amending the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) to include venue reform, but the Republican leadership feared it might prevent passage of the bill. In recent years, Cornyn and Senator Elizabeth Warren (D-Mass.) have jointly sponsored bills that would end the competition. Representatives Zoe Lofgren (D-Cal.) and Ken Buck (R-Colo.) have sponsored similar legislation in the House.[58]

As senator from Delaware and Chairman of the Judiciary Committee, Joe Biden not only blocked venue reform but also became the public defender of the Delaware Bankruptcy Court and, indirectly, the bankruptcy court competition.[59] Passage of the reform bill would end forum shopping to Delaware. Delaware would lose the seven judgeships it gained through competition. Some commentators, including myself, believe venue reform will be enacted once President Biden leaves office.

B. Rule 1014(a)(2).

The Bankruptcy Rules drafters have long struggled against the tendency of the competing courts to retain cases filed in improper venues. The initial version of Bankruptcy Rule 1014(a)(2), adopted in 1983, allowed the courts discretion to retain cases filed in improper venues—even over the objections of parties in interest.[60] In 1986, Congress authorized the United States Trustee to object to improper venue.[61] By amendment to Rule 1014(b) in 1987, Congress removed the bankruptcy courts' discretion to retain improperly venued cases. But even after the 1987 amendments, the rule still required "a motion by a party in interest." There was "no provision for a court to act on its

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[58] H.R. 4193, 117th Cong. (2021), https://lofgren.house.gov/media/press-releases/lofgren-buck-introduce-bipartisan-legislation-end-corporate-bankruptcy-forum.

[59] *E.g.*, Joseph R. Biden Jr., *Give Credit to Good Courts*, LEGAL TIMES, June 20, 2005 (defending the Delaware Bankruptcy Court in part by making false statements about my published attacks on it); Lynn M. LoPucki, *Courting Big Bankrupts*, LEGAL TIMES, July 18, 2005 (describing Biden's falsehoods).

[60] LoPucki & Whitford, *supra* note 5, at 23 (1991) (noting that then version of Bankruptcy Rule 1014(a) allowed bankruptcy courts in improper venues to retain cases, even over the objection of parties in interest).

[61] Bankruptcy Code § 307.

own initiative."[62] The 2007 amendments to Bankruptcy Rule 1014(a)(2) authorized a bankruptcy court to transfer a case filed in an improper district "on its own motion."[63] Thus, step-by-step, the drafters pushed bankruptcy judges to do something about unlawful forum shopping. Bankruptcy Rule 1014(a)(2) currently provides:

> If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

Although the rule does not expressly require the court to raise the issue of improper venue, once the court, the United States trustee, or a party in interest raises it, the court no longer has the option to retain the case.[64] 28 USC §1406(a) provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."[65] Even after those changes, the courts transfer no big bankruptcies.

Congress has not addressed manufactured venue. Although it is unseemly, some courts consider manufactured venue arguably lawful.[66] But in recent years, big bankrupts are filing in competing courts without bothering to manufacture venue.

III. THE VENUE HOOK STUDY

A. Study Design

Beginning in 2021, we gathered venue data on the 195 large, public companies that filed Chapter 11 cases from November 27, 2012, through December 31, 2021. We identified the universe from the Florida-UCLA-LoPucki Bankruptcy Research Database.[67] November 27, 2012, was the day Judge Shelly Chapman issued her opinion in *Patriot Coal*. Prior to that date, it was common practice to manufacture venue by forming a shell entity in the destination district, putting it into bankruptcy, and then filing the entire group in that

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[62] *Id.* ("The United States trustee may appear and be heard on issues relating to the transfer of the case or dismissal due to improper venue.").

[63] Hightman v. FCA US LLC, 2019 WL 3780272, at *3 (S.D. Cal. Aug. 12, 2019) ("The 2007 Amendments to Bankruptcy Rule 1014(a)(1) and (2) expressly authorize a court, on its own motion … to dismiss or transfer a case filed in an improper district … either in the interest of justice or for the convenience of the parties.").

[64] *See supra* note 28.

[65] "District court," as used in this provision, includes the bankruptcy court. *See, e.g.*, Thompson v. Greenwood, 507 F.3d 416, 419 (6th Cir. 2007) (Presumably, since bankruptcy judges "constitute a unit of the district court," 28 U.S.C. § 151 (2006), this includes Title 11 cases.").

[66] *In re* Patriot Coal Corp., 482 B.R. 718, 742 (Bankr. S.D.N.Y. 2012) ("[It] could be argued that [manufacturing venue] was entirely consistent with, or even required by, the Debtors' fiduciary duties.").

[67] FLORIDA-UCLA-LOPUCKI BANKR. RSCH. DATABASE, https://lopucki.law.ufl.edu/spreadsheet.php (herein after BRD).

district on the ground that the case of an affiliate was pending there. That was what Patriot Coal had done. In her opinion, Judge Chapman harshly criticized the practice and transferred the case to St. Louis:

> Notwithstanding the absence of bad faith on the part of the Debtors in filing these cases in the Southern District of New York in literal compliance with section 1408, this Court cannot allow the Debtors' venue choice to stand, as to do so would elevate form over substance in way that would be an affront to the purpose of the bankruptcy venue statute and the integrity of the bankruptcy system. Creating PCX and Patriot Beaver Dam solely for the purpose of establishing venue is not "the thing which the statute intended."[68]
>
> Here . . . the Debtors created facts in order to satisfy the statute, as opposed to taking advantage of the facts as they existed. Permitting the Debtors' cases to remain in this District under these circumstances would all but render the venue statute meaningless. It would allow potential large corporate debtors to choose what they view as the optimal venue for their bankruptcy cases and in preparation for filing chapter 11, incorporate an affiliate in that location for purposes of satisfying section 1408.[69]

The purpose of the Venue Hook Study was to determine whether, after *Patriot Coal*, large, public companies continued to incorporate venue hooks to qualify for venue in their preferred bankruptcy courts. We found that only five of the 195 cases in our study (3%) relied on venue hooks incorporated less than a year before bankruptcy.

Table 1. Companies Incorporating Venue Hooks in the Year Prior to Filing

10-K filing company (formation state) / Venue hook (formation state)	City, district filed	Venue hook formation to filing, in days	Date filed
Intelsat S.A. (Luxembourg) / Intelsat Virginia Holdings LLC (Virginia)	Richmond, EDVA	30	5/13/2020
California Resources Corp. (Delaware) / Tidelands Oil Production Co. LLC (Texas)	Houston, SDTX	61	7/15/2020
Pyxus International, Inc. (Virginia) / GSP Properties, Inc. (Delaware)	Wilmington, Delaware	83	6/15/2020
Avaya Inc. (Delaware) / Avaya Services Inc. (New York)	New York, SDNY	204	1/19/2017
Westmoreland Coal Company (Delaware) / Westmoreland Texas Jewett Coal Co. (Texas)	Houston, SDTX	222	10/19/2018

We unexpectedly discovered fifteen cases in which debtors filed in a district where they had no apparent claim to venue (the Improper Venue Cases). In six of the 195 groups studied (3%), the venue hook had an implausible claim to venue based on incorporation in a multi-district state (the Implausible Venue Cases). But in another nine of the 195 cases studied (5%), the venue facts stated in the petitions were apparently inconsistent with the venue claims in the petitions (the False Venue Claim Cases).

[68] *In re* Patriot Coal Corp., 482 B.R. 718, 744 (Bankr. S.D.N.Y. 2012).

[69] *Id.* at 746.

To qualify to file in a district, a venue hook must have its "domicile, principal place of business, or principal assets in the district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district."[70] In each of the False Venue Claim Cases, no member of the group had its domicile in the district during any part of the 180 days, and no member reported having its principal place of business or principal assets in the district at the time of filing.

That left open the possibility that a member of the group had its principal place of business or principal assets in the district during the larger portion of the 180 days but moved it out of the district before filing. We researched that possibility with respect to each, finding no evidence any had done so. The likelihood that any of the Improper Venue Cases is explained by such a move-out is small. Any move-out would be a coincidence, not a legal strategy; the debtor gains no legal advantage from it. I refer to situations with no evidence of a move-out but no proof one did not occur as an "apparent" lack of venue.

In another three of the 195 cases studied (2%), the group could have properly claimed venue in the district. But the groups' lawyers filed the cases in the wrong order (the Filing Order Cases). As a result, the venue claims of the first entities to file were false.

The study design assumes that, within a district, case numbers were assigned in the order in which the cases were filed. The courts in which the No Venue Cases were filed all use the Case Management/Electronic Case Files (CM/ECF) system. CM/ECF is the federal judiciary's system that allows case documents, such as pleadings, motions, and petitions, to be filed with the court online.[71] When petitions are filed online, CM/ECF assigns the case numbers sequentially. "Sequentially" means in the order in which the cases are filed. Although the PACER Manual does not make this clear, the websites of many of the bankruptcy courts do.[72] For example, the Southern District of California Bankruptcy Court website states:

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[70] 28 U.S.C. § 1408.

[71] United States Courts, Electronic Filing (CM/ECF), https://www.uscourts.gov/court-records/electronic-filing-cmecf (explaining CM/ECF). For similar statements in other districts, see Case Number, What Does It Mean? | Central District of California | United States Bankruptcy Court, https://www.cacb.uscourts.gov/faq/case-number-what-does-it-mean (last visited Jul. 20, 2024); Case Numbering System | Eastern District of Texas | United States Bankruptcy Court, https://www.txeb.uscourts.gov/case-numbering-system (last visited Jul. 20, 2024); Court Case Number Format | eService Center & Washington Courts FAQs, https://info.courts.wa.gov/support/solutions/articles/72000529035-court-case-number-format (last visited Jul. 20, 2024); Office of the Chapter 13 Trustee: Glossary of Terms, https://www.chi13.com/Glossary.html (last visited Jul. 20, 2024); Online Filing | Northern District of Florida | United States Bankruptcy Court, https://www.flnb.uscourts.gov/online-filing (last visited Jul. 20, 2024); In re Grant Broadcasting of Philadelphia, Inc., 72 B.R. 888 (Bankr. E.D. Pa. 1987).

[72] UNITED STATES BANKR. CT. N.D. OF FLA., https://www.flnb.uscourts.gov/online-filing (last visited July 23, 2024) ("The remaining digits were the numeric sequence in which the case was filed in that division (e.g.,02-70003 was the third case filed in the Tallahassee division in 2002)."); UNITED STATES BANKR. CT. E.D. OF TEX., https://www.txeb.uscourts.gov/case-numbering-system (last visited July 23, 2024) ("The last four digits are the sequence number. Therefore, the first case filed in the Tyler division in 2007 would be assigned the number 07-60001, in Texarkana the number 07-50001, etc.); MARILYN O. MARSHALL CHAPTER 13 TRUSTEE GLOSSARY OF TERMS, https://www.chi13.com/Glossary.html (last visited July 23, 2024) ("The bankruptcy clerk assigns the next available sequence number to each bankruptcy case as it is filed. This

> A bankruptcy case number consists of the **filing year** (along with five additional digits), the initials of the **judge** assigned to the case, and the **bankruptcy chapter number**. For example, for this case number
>
> **16-90131 - LT7**
>
> The number **16** refers to the year 2016
>
> *The number **90131** is a sequential number assigned to the case in the order it was filed*
>
> The letters **LT** refers to Judge Laura Taylor
>
> The **7** refers to a Chapter 7 bankruptcy[73]

Non-bankruptcy courts, as well as bankruptcy courts, generally assign case numbers sequentially in the order in which the cases are filed.[74]

To determine whether there was then "pending a case . . . concerning such person's affiliate" for venue purposes, we assumed that the group members' cases were filed in the order of their case numbers. An affiliate's case was pending at the time an entity filed if any affiliate's case number was lower than the entity's case number.

B. Method

We identified the False Venue Claim Cases in three steps. First, we downloaded the administrative consolidation order for each of the 195 groups studied and used it to identify the venue hook in each group. The venue hook was the group member with the lowest case number. Second, we downloaded the venue hook's petition and determined from it, for each venue hook, (1) the district of its principal place of business, (2) the district of its principal assets, and (3) its formation state. For a large majority of the venue hooks, one of the three was the district in which that entity filed its bankruptcy. In those cases, we assumed that venue was proper.

The third step was to study more intensively the groups whose venue hooks did not appear to qualify to file in the district where they did. We downloaded all the petitions for the members of those groups. We listed the groups on a spreadsheet, and beneath each group's name, we listed the consolidated entities in the order of their case numbers.

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sequence number starts over again at '1' each January."); UNITED STATES BANKR. CT. N.D. ILL., https://www.ilnb.uscourts.gov/news/new-case-number-sequence-2011 (last visited July 23, 2024) ("Due to continued increase in the number of cases filed in the Northern District of Illinois, we have adjusted the beginning number of cases filed in the Western Division (Rockford) for calendar year 2011 to begin at 80,000. Thus all cases filed in the Western Division will begin at 80001").

[73] Emphasis added. What Does the Bankruptcy Case Number Mean? | Southern District of California | United States Bankruptcy Court, https://www.casb.uscourts.gov/nodeblock/what-does-bankruptcy-case-number-mean (last visited Jul. 20, 2024).

[74] Court Case Number Format https://info.courts.wa.gov/support/solutions/articles/72000529035-court-case-number-format ("The next series of digits is the actual sequential number of the case beginning from 00001 in the current year. ... Example: Case number 93 1 00042 7 shows that the case was the 42nd criminal case filed in 1993. The check-digit is seven.").

For each entity of each group, we determined (1) the entity's principal place of business, (2) the location of the entity's principal assets, (3) the entity's formation state, (4) whether the properly venued case of the entity's affiliate was pending in the district, and (5) the venue basis claimed. A prompt on the first page of the petition required the filer to state the address of its principal place of business and the location of its principal assets. Nearly all did so. We determined and recorded the districts in which those addresses were located.

We determined the formation state by examining the corporate records of the formation state. Formation states can and do change over time, and we were studying some of the cases years after they were filed. To take formation state changes into account, we examined the filing history for each entity. We sought conclusive evidence of the formation state at the time of filing and during the 180 days prior to filing.

The entities drafted their petitions on Official Form 201, Voluntary Petition for Non-Individuals Filing for Bankruptcy. The Form asks: "Why is the case filed in this district?" It offers two alternatives and invites the filer to "[c]heck all that apply." The alternatives are:

> ☐ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
>
> ☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

We recorded the petitioners' claims on the spreadsheet as "independent," "affiliate," or "both."[75]

The final step was to determine whether each entity had a basis for venue in the district in which it filed. I considered each of the four possible bases for venue, including bases the entity did not claim. I considered the case of an affiliate to be pending only if venue was proper as to the affiliate.[76]

C. Statutory Interpretations

My categorization of the cases into Implausible Venue Cases, False Venue Claim Cases, and Filing Order Cases is based on four interpretations of the venue statutes and rules.

1. The domicile of a corporation or an LLC is in its state of incorporation.

2. The domicile of a limited partnership may be in its formation state or only at its principal place of business.

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[75] We used "Independent" as an abbreviation for domicile, principal place of business, or principal assets.

[76] The opposite view—that the case of an affiliate is pending even if venue is improper as to the affiliate—would lead to an absurd result. If no group member had a basis for venue in the district, but all group members filed there, venue would be proper for all groups members except the first to file. Even the first to file could cure its improper venue by dismissing its case and refiling.

3. A corporation's domicile is in the district in which it has its greatest presence.

4. Registration to do business in a state as a foreign entity does not make the state the entity's domicile.

5. An entity can have its "principal assets" in only one district.

1. Corporate and LLC Domicile

Under 28 U.S.C. § 1408, a bankruptcy case can be commenced in the district of the debtor's domicile. Long before that statute was enacted, the United States Supreme Court held that "the legal existence, the home, the domicile, the habitat, the residence, the citizenship of the corporation can only be in the state in which it was created."[77] Under 28 U.S.C. § 1408, a "corporation's domicile is generally held to be in its state of incorporation."[78] The same is true for an LLC.[79] For the purposes of this study, I regarded a corporation or LLC as domiciled in the state in which it is incorporated.

2. Limited Partnership Domicile

A substantial majority of courts facing the issue have held that the domicile of a limited partnership for the purpose of bankruptcy venue is at its principal place of business, not in the state of its formation.[80] Two courts have held that a limited partnership, like a

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[77] Shaw v. Quincy Mining Co., 145 U.S. 444, 450, 12 S. Ct. 935, 937, 36 L. Ed. 768 (1892).

[78] *In re* Shorts Auto Parts of Warren, Inc., 136 B.R. 30, 35 (Bankr. N.D.N.Y. 1991) ("A corporation's domicile is generally held to be its state of incorporation."); *In re* Dunmore Homes, Inc., 380 B.R. 663, 670 (Bankr. S.D.N.Y. 2008) (same); *In re* Cox Operating, LLC, 652 B.R. 49, 54 (Bankr. E.D. La. 2023) ("Venue is proper in the district in which the person or entity's domicile or residence (i.e., the state of incorporation or organization for corporate entities)."); *In re* Segno Commc'ns, Inc., 264 B.R. 501, 506 (Bankr. N.D. Ill. 2001) ("To determine the domicile of a corporation we look to the state of its incorporation.").

[79] *See In re ERG Intermediate Holdings, LLC*, No. 15-31858-HDH11, 2015 WL 6521607, at 4 (Bankr. N.D. Tex. Oct. 27, 2015) ("As each of the Debtors before the Court is a limited liability company that was organized in the state of Texas, the domicile of the Debtors is the state of Texas."); *In re Amazing Energy MS, LLC*, No. 20-01243-NPO, 2020 WL 4730890, at 6 (Bankr. S.D. Miss. June 25, 2020) ("[Amazing Energy MS, LLC] was incorporated in Mississippi, and, therefore, is domiciled in Mississippi.); *In re Cox Operating, LLC*, 652 B.R. 49, 54–55 (Bankr. E.D. La. 2023) ("Because Cox Operating [LLC] is organized under the laws of Louisiana, venue for the Involuntary Case is proper in this Court under § 1408(1).").

[80] *E.g.*, *In re* LaGuardia Assocs., L.P., 316 B.R. 832, 836 (Bankr. E.D. Pa. 2004) (stating, in the case of a limited partnership that "the place where a partnership was formed is viewed as being of scant significance for venue purposes, because 'it is difficult to see how a partnership can be said to have a residence or domicile.'"); *In re* Peachtree Lane Assocs., Ltd., 198 B.R. 272, 273–74 (Bankr. N.D. Ill. 1996), aff'd, 206 B.R. 913 (N.D. Ill. 1997), aff'd sub nom. Matter of Peachtree Lane Assocs., Ltd., 150 F.3d 788 (7th Cir. 1998) (stating, in the case of a limited partnership that "[a]s several courts and commentators have noted, since a partnership does not have a residence or domicile, 'the only meaningful venue test with respect to a partnership may be the district in which it has its principal place of business or its principal assets in the United States.'"); *In re* Oklahoma City Assocs., 98 B.R. 194, 197 (Bankr. E.D. Pa. 1989) (stating, in the case of a limited partnership that "a partnership's principal place of business determines its residence or domicile"); *In re* 1606 New Hampshire Ave. Assocs., 85 B.R. 298, 302 (Bankr. E.D. Pa. 1988) (stating as to a limited partnership "Collier points out that a partnership does not have a "residence" or "domicile," and hence that venue, as to a partnership, is limited to the entity's principal place of business or the locus of its principal assets.").

corporation, is domiciled in its formation state.[81] For none of the fifteen Improper Venue Cases in this study did this issue determine the categorization of the case.

3. Incorporation in a Multi-District State

Some states are federal court districts. Delaware and Nevada are examples. Other states are divided into two or more federal court districts. New York and Texas are examples.

In In re *ERG Intermediate Holdings, LLC*, the Bankruptcy Court for the Northern District of Texas held that a debtor incorporated in Texas was entitled to file its bankruptcy in any of Texas' four districts:

> For entities incorporated in states with multiple Districts, the Court sees no basis for finding the entity to be domiciled in one District but not the others. See *In re* Dunmore, 380 B.R. at 670 (holding that venue was proper in the Southern District of New York because the debtor was incorporated in the state of New York). Accordingly, an entity that is formed under the laws of a given state is domiciled in the entire state for purposes of section 1408(1) and may file a case under the Bankruptcy Code in any District in that state. As each of the Debtors before the Court is a limited liability company that was organized in the state of Texas, the domicile of the Debtors is the state of Texas. Therefore, under the plain language of section 1408(1), venue for the Debtors' Cases is proper in the Northern District of Texas.[82]

To the contrary, under the plain language of §1408(1) venue based on domicile can be proper in only one district. Section 1408(1) authorizes filing in "the district . . . in which *the* domicile" has been located, not the district in which *a* domicile has been located. No court other than *ERG Intermediate Holdings* has ever held, or recited in dicta, that a person, corporate or otherwise, can have more than one domicile for the same purpose.[83]

In *In re* Fada Radio & Electric Co., the court expressly rejected the notion that filers incorporated in the destination state have their choice of districts in that state:

> The debtor makes no contention that its principal place of business is within this district. It makes no contention that its principal office as registered with the Secretary of State of this state is within this district. It does contend, however, that its domicile is the State of New York and that it is thus entitled to bring a bankruptcy proceeding in any of the federal judicial districts in

[81] *In re* Willows Ltd. P'ship, 87 B.R. 684, 685 (Bankr. S.D. Ala. 1988) (stating in the case of a limited partnership that "[i]n establishing the location of a partnership's domicile or principal place of business, the courts have generally viewed partnerships in much the same manner as corporations. Thus it has been held that a partnership's domicile is in the state where the partnership was created."); *In re* Spicer Oaks Apartments, Ltd., 80 B.R. 142, 143 (Bankr. E.D. Mo.1987) ("[T]he residence and the citizenship of a corporation can only be in the state that created the corporation. By analogy, the State of Florida which created the Debtor limited partnership is the domicile of the limited partnership.").

[82] 2015 WL 6521607, at *4 (Bankr. N.D. Tex. Oct. 27, 2015).

[83] In Dunsmore, the court held that New York corporation that had no business or assets in New York could file in the Southern District of New York. Although the court did not acknowledge it, the corporation had its registered office and registered agent in the Southern District of New York.

> the State of New York… In none of [the three cases cited] was any contention made that a bankruptcy case could be laid in any and every district in the state in which it was incorporated. The correct rule is, of course, that stated by District Judge Westenhaver in *In re* Devonian Mineral Spring Co., D.C.N.D. Ohio E.D., 272 F. 527, 530, where he said, 'It being admitted that the bankrupt company is a corporation organized under the laws of Ohio, and this district being the only one in which it had an office or did business, clearly 'the debtor has his domicile' in this district.'[84]

For this study, I regard a corporation as domiciled in only a single district. That district is the district of the state of its incorporation in which the corporation has its greatest presence. Because *ERG Intermediate Holdings* held to the contrary, claiming domicile in a district in the incorporation state in which the corporation has no presence is not a false venue claim. I classified the cases doing so as Implausible Venue Cases.

A corporation, limited liability company, or limited partnership formed under a law of the state will always have a presence in the state. Entity laws in the U.S. uniformly require that an entity formed in the state maintain a registered office and registered agent in the state.[85] If the entity has no other presence in the state, bankruptcy venue would be proper in the district in which the registered office and registered agent are located.[86]

4. Principal Assets

> 28 USC §1408 provides in relevant part that a bankruptcy
>
> case . . . may be commenced in the district court for the district—
>
> 1. in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the [requisite period of time].

The overwhelming weight of authority reads the phrase "principal assets" in that section to refer to assets located in a single district.[87]

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[84] *In re* Fada Radio & Elec Co, 132 F. Supp. 89, 91 (S.D.N.Y. 1955).

[85] *See, e.g.*, LYNN M. LOPUCKI & ANDREW VERSTEIN, BUSINESS ASSOCIATIONS: A SYSTEMS APPROACH 214-15 ("Every state requires every registered entity to file either an annual or a biennial report, pay an annual fee, and maintain a resident agent to receive service of process in the state.").

[86] *Supra* note 84 and accompanying text.

[87] *E.g.*, *In re Moreno*, No. 23-50889, 2024 WL 1327148, at *3 (Bankr. W.D. La. Mar. 27, 2024) (valuing the debtor's assets to determine which set are the "principal assets"); *In re Szanto*, No. BR 22-01558-CL11, 2022 WL 4391803, at *8–9 (Bankr. S.D. Cal. July 22, 2022), *aff'd sub nom. Szanto v. Chase Bank*, No. 22CV1142-JO-BGS, 2023 WL 4629564 (S.D. Cal. June 15, 2023), *appeal dismissed sub nom. In re Szanto*, No. 23-55633, 2024 WL 3454980 (9th Cir. Feb. 29, 2024) ("To the extent Debtor may assert his principal assets are in the Southern District, it must be rejected. Qualitatively and quantitatively, his most important, consequential, and influential United States assets are in the Central District."); In re Invs. Cap. Partners II, LP, 495 B.R. 809, 811 (Bankr. W.D. Ky. 2013) ("Under [28 U.S.C. § 1408] Subsection 1, a case may be commenced in the district court for the district in which the "principal assets" of the entity had been located for the 180 days immediately preceding the filing.").

> Simply having an asset located in a given District is not enough. The language of § 1408(1) requires that for venue to properly lie, the case must be commenced in a district "in which the ... principal assets in the United States ... have been located [for the requisite period of time]."
>
> The term "principal" is not defined in the Code. But in general, use of the term as an adjective commonly connotes "chief; leading; most important or considerable; primary...." *See* Black's Law Dictionary 1192 (6th ed.1990). The Court has not been provided any authority, nor cogent reason, to convince it to stray from the common meaning of the term. The entirety of the assets, as shown on the filed and sworn schedules or otherwise proved by the evidence, must be evaluated to determine the quantum located in each district. From that, a determination can be made as to where the majority of the assets are located.[88]

Numerous courts have read "principal assets" in §1408(1) as synonymous with "*the* principal assets."[89]

In three recent cases, however, bankruptcy courts have stated that "a debtor may have more than one appropriate venue based upon more than one principal asset."[90] The three courts quote each other that

> The court believes that a debtor's principal assets can be located in several different districts because '[t]he venue statute does not require that only *the* principal asset may support venue; rather, venue may be proper in a district where principal assets are located. Thus, a debtor may have more than one appropriate venue based upon more than one principal asset.[91]

None of the courts suggests any basis other than the language of the statute for this conclusion.

When used as an adjective "principal" means greatest or most important. The idea that the debtor can have principal assets in two districts is thus an oxymoron.

> Although the term "principal asset" is not defined by the Bankruptcy Code, the term "principal" refers to an item of the "first, highest or foremost in importance, rank, worth, or degree." Am. Heritage Dictionary (4th ed. 2000). Therefore, the analysis required is a simple determination of where the greater dollar value of all property of the estate is located.[92]

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[88] *In re Shelton*, No. 01-20655, 2001 WL 35814440, at *5 (Bankr. D. Idaho Oct. 12, 2001).

[89] *E.g.*, In re Canavos, 108 B.R. 55, 58 (Bankr. E.D. Pa. 1989) ("[V]enue in this district could alternatively be based upon the fact that the "principal assets" of the Debtor are here.").

[90] *In re Mid Atl. Retail Grp., Inc.*, No. 07-81745, 2008 WL 612287, at *3 (Bankr. M.D.N.C. Jan. 4, 2008) (quoting *In re Ross*, 312 B.R. 879, 888–89 (Bankr. W.D. Tenn. 2004), *aff'd sub nom. In re MacDonald*, 356 B.R. 416 (W.D. Tenn. 2006), *aff'd sub nom. Thompson v. Greenwood*, 507 F.3d 416 (6th Cir. 2007); *In re Ortiz*, No. 15-05938 (ESL), 2017 WL 770611, at *2 (Bankr. D.P.R. Feb. 27, 2017) (quoting the same language in *Mid Atl. Retail Grp., Inc.*

[91] *Id.*

[92] *In re* Neufeld, No. 1:12-BK-02177MDF, 2012 WL 5845590, at *1–2 (Bankr. M.D. Pa. Nov. 16, 2012).

The three courts mistake the grammatical structure of the statute. They assume "the" in the phrase "the domicile, residence, principal place of business in the United States, or principal assets in the United States" modifies only "domicile." From the absence of "the" before "principal assets" in that list they leap to the conclusion that that the statute authorizes multiple "principal assets." The argument proves too much. It leads equally to the conclusion that debtors can have more than one principal place of business.

The argument that debtors can have their principal assets in more than one district is clearly wrong. But the fact that three courts have made it, means that it is no longer frivolous. For that reason, I regard the argument as merely implausible.

D. Perjury

Bankruptcy petitions are filed on a fill-in-the-blanks and check-the-boxes official form that contains standardized language. The seventy-one False Venue Claim petitions all contained the same language with respect to perjury. "I have examined the information in this petition and have a reasonable belief that the information is true and correct." Immediately following that is the language that "I declare under penalty of perjury that the foregoing is true and correct." That statement is followed by a place for an execution date and a place for a "Signature of authorized representative of debtor." The drafters have made minor amendments to the form over the time covered by this study,[93] but this is its current appearance:

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
MM / DD / YYYY

X _____ _____
Signature of authorized representative of debtor Printed name

Title _____

The making of an unsworn statement under penalty of perjury is authorized by 28 U.S.C. § 1746, which provides:

> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or

[93] *See, e.g.*, NII Holdings, Inc., Voluntary Petition at 1-3, NII Holdings, Inc. (S.D.N.Y. Sept. 15, 2014), Doc. No. 1 (showing an earlier Official Form (B1) that sought most of the same information).

> permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same . . . such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

18 U.S.C.A. § 152 provides in relevant part:

> A person who . . .
>
> (3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11 . . .
>
> shall be fined under this title, imprisoned not more than 5 years, or both.

To be guilty of perjury under the language of these statutes, the debtor's authorized representative must "knowingly and fraudulently" make the false declaration. If the representative knows that the declaration is false, the statement is made "knowingly and fraudulently."[94] That the representative did not read or understand the venue questions is no defense. "A debtor has a paramount duty to consider all questions posed on statement or schedules carefully and see that question is answered completely in all respects."[95] Prosecutions for false statements in bankruptcy petitions are common,[96] although we found no prosecutions for false statements regarding venue.

Depending on the knowledge and intent of the lawyers and the officers who signed, the lawyers might be guilty of subornation of perjury:

> To establish a case of subornation of perjury, a prosecutor must demonstrate that perjury was committed; that the defendant procured the perjury corruptly, knowing, believing or having reason to believe it to be false

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[94] *In re* Green, 2014 WL 3953470, at *6 (B.A.P. 1st Cir. Aug. 6, 2014 ("A false oath is knowingly and fraudulently made if the debtor "knows the truth and nonetheless willfully and intentionally swears to what is false."); *In re* Belanger, 524 B.R. 634, 638 (Bankr. E.D. Pa. 2015) "The requirement that a false statement is knowingly and fraudulently made is satisfied for purposes of 11 U.S.C. § 727(a)(4)(A) if the debtor knows the truth and nonetheless willfully and intentionally swears to what is false.").

[95] *In re* Braymer, 126 B.R. 499, 503 (Bankr. N.D. Tex 1991).

[96] *E.g.*, United States v. Harley, 685 F. App'x 133, 135 (3d Cir. 2017) (affirming conviction for false statements under penalty of perjury in a bankruptcy petition); United States v. Grant, 850 F.3d 209, 213 (5th Cir. 2017) (affirming conviction for false statements under penalty of perjury in a bankruptcy petition); United States v. Mays, 852 F. App'x 801 (5th Cir. 2021) (affirming conviction for false statements under penalty of perjury in a bankruptcy petition).

> testimony; and that the defendant knew, believed or had reason to believe that the perjurer had knowledge of the falsity of his or her testimony.[97]

One of the attorneys for the debtors signed the petition in each of the No Venue Cases. The petitions do not state the meaning or significance of the attorneys' signatures, but Bankruptcy Rule 9011 does. The lawyers' responsibility under Rule 9011 is addressed in Part V.B., below.

In eight of the nine False Venue Claim cases, the court found that venue was "proper" in the district on no apparent basis other than the statements in the petitions.[98] In the ninth, Stone Energy, the court found the venue was "allowed"[99] The proper venue finding typically appeared in the confirmation order as well as in other orders, and says essentially: "It is determined, found … and ordered that . . . Venue in the Court was proper

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[97] U.S. Department of Justice, ARCHIVES, Criminal Resource Manual § 1752, https://www.justice.gov/archives/jm/criminal-resource-manual-1752-subornation-perjury#:~:text=To%20establish%20a%20case%20of,believe%20that%20the%20perjurer%20had

[98] Order Approving the Debtors' Disclosure Statement for, and Confirming, the Debtors' Joint Chapter 11 Plan of Reorganization of Denbury Resources Inc. and its Debtor Affiliates at 6, In re Denbury Resources Inc., et al., No. 20-33801 (S.D. Tex. Sept. 2, 2020), ECF No. 273 ("Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code."); Findings of Fact, Conclusions of Law, and Order Confirming the Joint Plan of Liquidation of RTW Retailwinds, Inc. and Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code at 5, In re RTW Retailwinds, Inc., et al., No. 20-18445 D. N.J. Dec. 10, 2020), ECF No. 690 ("Venue was proper as of the Petition Date and is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409."); Order (I) Approving the Disclosure Statement for and Confirming the Joint Prepackaged Plan of Reorganization of Jason Industries, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) Granting Related Relief at 5-6, In re Jason Industries, Inc., et al., No. 20-22766 (S.D.N.Y. Aug. 66, 2020), ECF No. 222 ("Venue in the Court was proper as of the Petition Date pursuant to 28 U.S.C. §§ 1408 and 1409 and continues to be proper during these Chapter 11 Cases."); Amended Order Approving the Disclosure Statement for, and Confirming, the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates at 6, In re J.C. Penney Company, Inc., et al., No. 20-20182 (S.D. Tex. Dec. 16, 2020), ECF No. 2190 ("Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code."); Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code at 4, In re Phi, Inc., et al., No. 19-30923 (N.D. Tex. Aug. 2, 2019), ECF No. 879 ("Venue in the Bankruptcy Court is proper under 28 U.S.C. §§ 1408 and 1409."); Findings of Fact, Conclusions of Law and Order Confirming Amended Plan of Liquidation of the Debtors and Debtors in Possession Pursuant to Chapter 11 of the Bankruptcy Code at 5, In re R.E. Gas Development, LLC, et al., No. 18-22032 (W.D. Pa. Oct. 16, 2018), ECF No. 1011. ("Venue is proper before this Court pursuant to 28 U.S.C. § 1408."); Findings of Fact, Conclusions of Law and Order (I) Approving Debtor's (A) Disclosure Statement, (B) Solicitation of Votes and Voting Procedures and (C) Form of Ballots, and (II) Confirming Amended Prepackaged Chapter 11 Plan of Reorganization of Walter Investment Management Corp. and the Affiliate Co-Plan Proponents at 7, In re Walter Investment Management Corp, et al., No. 17-13446 (S.D.N.Y Jan. 18, 2018), ECF No. 172 ("Venue is proper before this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409."); Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Midstates Petroleum Company, Inc. and Its Debtor Affiliate at 5, In re Midstates Petroleum Company, Inc., et al. No. 16-32237 (S.D. Tex. Sept. 28, 2016), ECF No. 698 ("Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code.").

[99] Order Approving Debtors' Disclosure Statement and Confirming the Debtors' Second Amended Joint Plan of Reorganization at 6, In re Stone Energy Corporation, et al., No. 16-36390 (S.D. Tex. Feb. 14, 2017), ECF No. 528 ("Venue is allowed pursuant to Sections 1408 and 1409 of title 28 of the United States Code.").

as of the Petition Date pursuant to 28 U.S.C. §§ 1408 and 1409 and continues to be proper during these Chapter 11 Cases."[100]

If the courts that attracted these cases were unaware of the false venue claims, those claims may constitute fraud on the court. The elements of fraud on the court are

> conduct: 1) on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court.[101]

These elements must be proven by clear and convincing evidence.[102]

All five elements of fraud on the court may be present in some of the False Venue Claim Cases. First, the attorneys who signed the petitions are "officers of the court."[103] Second, the conduct is "directed to the judicial machinery itself" in that the attorneys are, almost certainly, seeking to file their cases in courts that will provide them with identifiable relief that courts in the proper venues would not. Third, given the sharp differences in the practices of the bankruptcy courts and the resulting importance of venue, I consider it a reasonable inference that false venue claims in cases where no underlying basis for venue exists, are intentionally false or in reckless disregard for the truth by at least one of the persons involved. Fourth, the venue claims were positive averments made by clients who were under a duty to disclose their bases for venue as a condition of bankruptcy relief. Fifth, unless the judges were aware the claims were false and ignoring the falsity, the false claims deceived the courts. Eight of the judges made a specific finding that venue was proper in the district, based on an apparently false claim of venue.

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[100] Order (I) Approving the Disclosure Statement for and Confirming the Joint Prepackaged Plan of Reorganization of Jason Industries, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) Granting Related Relief, docket # 222 at 5-6, *In re* Jason Industries, Inc., case no. 20-22766, United States Bankruptcy Court Southern District of New York.

[101] Carter v. Anderson, 585 F.3d 1007, 1011 (6th Cir. 2009).

[102] *Id.*

[103] Reaser v. Reaser, 688 N.W.2d 429, 435 (S.D. 2004) ("Courts have found fraud upon the court only where there has been the most egregious conduct involving a corruption of the judicial process itself. Examples are . . . the involvement of an attorney (an officer of the court) in the perpetration of fraud.").

IV. CASE ANALYSES

A. The False Venue Claim Cases

The seventy-one petitions filed in the nine False Venue Claims cases showed no principal place of business or principal assets in the district in which the entities filed. We found evidence of only one other venue-relevant connection to the filing district during the 180 days before filing. Although the principal assets of Rex Energy's venue hook, R.E. Gas Development, LLC appeared to be in the filing district, the petition showed them not to be.

Table 2. The False Venue Claim Cases.

Bankruptcy filing date	Name of 10-K Filer	Number of entities	Home district	Filing district
7/30/2020	Denbury Resources, Inc.	18	EDTX	SDTX
7/13/2020	RTW Retailwinds, Inc.	12	SDNY	DNJ
6/24/2020	Jason Industries, Inc.	8	EDWI	SDNY
5/5/2020	J.C. Penney Company, Inc.	18	EDTX	SDTX
3/14/2019	Phi Inc.	5	WDLA	NDTX
5/18/2018	Rex Energy Corporation	4	MDPA	WDPA
11/30/2017	Walter Investment Management Corp.	1	EDPA	SDNY
4/30/2016	Midstates Petroleum Company, Inc.	2	NDOK	SDTX
12/14/2016	Stone Energy Corporation	3	WDLA	SDTX
	Total	71		

The cases are described in this subpart, beginning with the most recent.

1. Denbury Resources

Denbury Resources was an independent oil and natural gas company located in Plano, Texas, a suburb of Dallas.[104] Plano is in the Eastern District of Texas. Eighteen Denbury group entities filed prepackaged bankruptcy cases in the Southern District of Texas.[105] On their petitions, all eighteen reported their principal place of business and principal assets to be in Plano. All the entities in the group were formed in Delaware more than 180 days before filing. As a result, the group had no apparent basis for a claim to venue in the Southern District of Texas.

The first entity in the group to file—the venue hook—was Denbury Onshore, LLC. Although that entity had been a Delaware limited liability company since 2003 and the petition indicated its principal place of business and principal assets were in Plano, Denbury Onshore claimed in its petition that it "had its domicile, principal place of

[104] Denbury Res. Inc., Annual Report (Form 10-K), at 5 (Feb. 27, 2020).

[105] Under the BRD Protocols:

> A case is prepackaged if the debtor drafted the plan, submitted it to a vote of the impaired classes, and claimed to have obtained the acceptances necessary for consensual confirmation before filing the case. The claim must include that no class rejects the plan or the class that rejects is minimal in dollar amount.

Lynn M. LoPucki, Protocols for the Florida-UCLA-LoPucki Bankruptcy Research Database, December 31, 2022.

business, or principal assets in this district[106] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district."

Denbury Onshore did not move its principal place of business or principal assets out of the Southern District of Texas to the Eastern District of Texas in the 180 days before bankruptcy. On its annual report to the state of Texas, nineteen months before bankruptcy, Denbury Onshore listed its principal place of business in Plano.[107] We found no evidence that Denbury Onshore moved its principal assets into and then out of the Southern District of Texas in the 180 days before filing. The Denbury group appears to have no claim to venue in the court where it filed—the Southern District of Texas.

Table 3. Denbury Resources, Inc., filed in the Southern District of Texas, July 30, 2020

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
20-33800	Denbury Onshore, LLC	EDTX	EDTX	Delaware	Independent
20-33801	**Denbury Resources, Inc.**	**EDTX**	**EDTX**	**Delaware**	**Affiliate**
20-33802	Denbury Air, LLC	EDTX	EDTX	Delaware	Affiliate
20-33803	Denbury Brookhaven Pipeline Partnership, LP	EDTX	EDTX	Delaware	Affiliate
20-33805	Denbury Brookhaven Pipeline, LLC	EDTX	EDTX	Delaware	Affiliate
20-33806	Denbury Gathering & Marketing, Inc.	EDTX	EDTX	Delaware	Affiliate
20-33807	Denbury Green Pipeline-Montana, LLC	EDTX	EDTX	Delaware	Affiliate
20-33808	Denbury Green Pipeline- North Dakota, LLC	EDTX	EDTX	Delaware	Affiliate
20-33809	Denbury Green Pipeline- Riley Ridge, LLC	EDTX	EDTX	Delaware	Affiliate
20-33810	Denbury Green Pipeline- Texas, LLC	EDTX	EDTX	Delaware	Affiliate
20-33811	Denbury Gulf Coast Pipelines, LLC	EDTX	EDTX	Delaware	Affiliate
20-33812	Denbury Holdings, Inc.	EDTX	EDTX	Delaware	Affiliate
20-33813	Denbury Operating Company	EDTX	EDTX	Delaware	Affiliate
20-33814	Denbury Pipeline Holdings, LLC	EDTX	EDTX	Delaware	Affiliate
20-33815	Denbury Thompson Pipeline, LLC	EDTX	EDTX	Delaware	Affiliate
20-33816	Encore Partners GP Holdings LLC	EDTX	EDTX	Delaware	Affiliate
20-33817	Greencore Pipeline Company LLC	EDTX	EDTX	Delaware	Affiliate
20-33818	Plain Energy Holdings, LLC	EDTX	EDTX	Delaware	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

2. RTW Retailwinds

RTW Retailwinds was a specialty women's omni-channel retailer located in New York City.[108] New York City is in the Southern District of New York. Twelve Retailwinds group entities filed free fall bankruptcy cases in the District of New Jersey.[109] On their petitions, all twelve reported their principal place of business and principal assets to be in

[106] The Southern District of Texas.

[107] Denbury Onshore, LLC, Texas Franchise Tax Public Information Report (Dec. 31, 2019).

[108] RTW Retailwinds, Inc., Annual Report (Form 10-K), at cover page, 2 (June 9, 2020).

[109] A free fall bankruptcy is a chapter 11 case in which the debtor has neither secured the creditors' acceptances nor reached an agreement with an important creditor group before filing the petition.

New York. Eight of the group's members were formed in Delaware. Two were formed in Ohio, one was formed in Massachusetts, and one was formed in New York. As a result, the group had no apparent basis for a claim to venue where it filed—in the District of New Jersey.

The first entity in the group to file—the venue hook—was RTW Retailwinds, Inc., the 10-K filer. Although that entity had been incorporated in Delaware since 2003 and the petition indicated its principal place of business and principal assets were in New York, RTW Retailwinds claimed in its petition that it "had its domicile, principal place of business, or principal assets in [the District of New Jersey] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district."[110]

It does not appear that RTW Retailwinds, Inc. moved its principal place of business or principal assets from the District of New Jersey to the Southern District of New York in the 180 days before bankruptcy. RTW Retailwinds, Inc. filed a form 10-K with the SEC for the period ending February 1, 2020—193 days before bankruptcy. The 10-K showed RTW Retailwinds, Inc.'s principal executive offices as in New York and only 26 of its 387 stores as in New Jersey.[111] From February 1, 2020 to the filing on July 13, 2020, Retailwinds filed nine 8-K reports with the SEC, each showing its principal executive offices as being in New York.[112] RTW Retailwinds appears to have had no claim to venue in the District of New Jersey when it filed there.

[110] Voluntary Petition for Non-Individuals Filing for Bankruptcy at 3, In re RTW Retailwinds, Inc., No. 20-18445 (D.N.J. July 13, 2020), ECF No. 1.

[111] RTW Retailwinds, Inc., Annual Report (Form 10-K), at cover page, 7 (June 9, 2020).

[112] *E.g.*, RTW Retailwinds, Inc., Current Report (Form 8-K), at 1 (Feb. 1, 2020); RTW Retailwinds, Inc., Current Report (Form 8-K), at 1 (Apr. 16, 2020); RTW Retailwinds, Inc., Current Report (Form 8-K), at 1 (July 13, 2020).

Table 4. RTW Retailwinds, filed in the District of New Jersey, July 13, 2020

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
20-18445	**RTW Retailwinds, Inc.**	**SDNY**	**SDNY**	**Delaware**	**Independent**
20-18446	Lerner New York Holding, Inc.	SDNY	SDNY	Delaware	Affiliate
20-18447	Lernco, Inc.	SDNY	SDNY	Delaware	Affiliate
20-18448	Lerner New York, Inc.	SDNY	SDNY	Delaware	Affiliate
20-18449	New York & Company, Inc.	SDNY	SDNY	Delaware	Affiliate
20-18450	Lerner New York GC, LLC	SDNY	SDNY	Ohio	Affiliate
20-18451	Lerner New York Outlet, LLC	SDNY	SDNY	Massachusetts	Affiliate
20-18452	New York & Company Stores, Inc.	SDNY	SDNY	New York	Affiliate
20-18453	FTF GC, LLC	SDNY	SDNY	Ohio	Affiliate
20-18454	Lerner New York FTF, LLC	SDNY	SDNY	Delaware	Affiliate
20-18455	Fashion to Figure, LLC	SDNY	SDNY	Delaware	Affiliate
20-18456	FTF IP Company, Inc.	SDNY	SDNY	Delaware	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

3. Jason Industries, Inc.

Jason Industries was a global industrial manufacturing company located in Milwaukee, Wisconsin.[113] Milwaukee is in the Eastern District of Wisconsin. Eight group members filed prepackaged bankruptcy cases in the White Plains division of the Southern District of New York.[114] On their petitions, seven reported their principal places of business and principal assets as located in Milwaukee and one reported its principal place of business and principal assets as located in Pittsburgh, Pennsylvania. Five of the group members were Delaware corporations. The other three were formed in Wisconsin, Pennsylvania, and Nevada. None had any apparent basis for venue in the Southern District of New York when it filed there.

The first entity in the group to file—the venue hook—was Jason Industries, Inc. Although that entity had been a Delaware limited liability company since 2013 and the petition indicated its principal place of business and principal assets were in Milwaukee, Jason Industries, Inc. claimed in its petition that it "had its domicile, principal place of business, or principal assets in [the Southern District of New York] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district."

[113] Jason Industries, Inc., Annual Report (Form 10-K), at cover page, 3 (Mar. 2, 2020).

[114] Under the BRD Protocols:

> A case is prepackaged if the debtor drafted the plan, submitted it to a vote of the impaired classes, and claimed to have obtained the acceptances necessary for consensual confirmation before filing the case. The claim must include that no class rejects the plan or the class that rejects is minimal in dollar amount.

Lynn M. LoPucki, Protocols for the Florida-UCLA-LoPucki Bankruptcy Research Database, December 31, 2022.

Table 5. Jason Industries, filed in the Southern District of New York, June 24, 2020

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
20-22766	**Jason Industries, Inc.**	**EDWI**	**EDWI**	**Delaware**	**Independent**
20-22767	Jason Partners Holdings, Inc.	EDWI	EDWI	Delaware	Affiliate
20-22768	Jason Holdings, Inc. I	EDWI	EDWI	Delaware	Affiliate
20-22769	Jason Incorporated	EDWI	EDWI	Wisconsin	Affiliate
20-22770	Milsco, LLC	EDWI	EDWI	Delaware	Affiliate
20-22771	Osborn, LLC	EDWI	EDWI	Delaware	Affiliate
20-22772	Schaffner Manufacturing Co., Inc.	WDPA	WDPA	Pennsylvania	Affiliate
20-22773	Jason International Holdings Inc.	EDWI	EDWI	Nevada	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

It does not appear Jason Industries, Inc. moved its principal place of business or principal assets from the Southern District of New York to the Eastern District of Wisconsin in the 180 days before bankruptcy. On its 10-K filed one hundred fourteen days before filing, for the year ending 175 days before filing, Jason Industries, Inc. identified its principal executive offices as being in Milwaukee and its "primary facilities" in the U.S. as being in Indiana and Ohio.[115] The Jason Industries' group appears to have had no plausible claim to venue in Southern District of New York when it filed there.

A participant in the case explained to me that (1) the petition showing Milwaukee to be the location of Jason Industries, Inc.'s principal assets was an unintentional error, and (2) that entity had principal assets in the Southern District of New York because it had bank accounts and stock certificates in White Plains. Jason Industries scheduled the bank accounts as worth $15,847,301, which is 39% of its $40,259,118 total scheduled assets. It scheduled the value of the stock as zero. Thus, based on the schedules, Jason Industries did not meet the traditional requirement for having "principal assets" in the Southern District of New York—more assets in that district than in any other district. Jason Industries may, however, have met the standard adopted in three recent bankruptcy court cases—substantial assets in the district. Thus, Jason Industries had, in my opinion, an implausible but not frivolous claim to venue in the Southern District of New York.

4. JC Penney

JC Penney, owner of the iconic department store, was located in Plano, Texas, a Dallas suburb. Plano is in the Eastern District of Texas. Eighteen group entities filed prenegotiated bankruptcy cases in the Southern District of Texas.[116] On each of their petitions, the eighteen reported their principal place of business and principal assets to be in Plano. Fifteen of the eighteen group members were formed in Delaware. Two were formed in New York, and one was formed in Puerto Rico. As a result, the group had no apparent basis for venue in the Southern District of Texas when it filed there.

[115] Jason Industries, Inc., Annual Report (Form 10-K), at cover page, 4 (Mar. 2, 2020).

[116] Under the BRD Protocols, a case is prenegotiated if it is not prepackaged, but the debtor negotiated the terms of a plan with at least one major creditor before filing. Lynn M. LoPucki, Protocols for the Florida-UCLA-LoPucki Bankruptcy Research Database, December 31, 2022.

The first entity in the group to file—the venue hook—was JC Penney Properties, LLC. That entity had long been incorporated in Delaware as JC Penney Properties, Inc., but converted to JC Penney Properties, LLC, a Delaware LLC, about 85 days before filing. The conversion is irrelevant to the venue claim because JC Penney Properties was the same entity before and after bankruptcy,[117] and the venue rules are the same for corporations and LLCs.[118] The petition indicated that JC Penney Properties, LLC's principal place of business and principal assets were in Plano at the time it filed bankruptcy, and that the LLC was formed in Delaware. But the petitioner nevertheless checked the box indicating that it "had its domicile, principal place of business, or principal assets in [the Southern District of Texas] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district." That could logically be possible only if JC Penney Properties, LLC moved from the Southern District of Texas to the Eastern District of Texas in the 180 days before bankruptcy. In the JC Penney group's form 10-K—filed 95 days before the petition date—it listed its principal executive offices as located in in Plano.[119] Nothing in the 10-K indicated that a move was in progress.

[117] Del. Code tit. 8 § 266(h) (2023) ("When a corporation has been converted to another entity or business form pursuant to this section, the other entity or business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the corporation.").

[118] *Supra*, note 79 and accompanying text.

[119] J.C. Penney Co., Annual Report (Form 10-K), at 1 (Mar. 20, 2020).

Table 6. JC Penney, filed in the Southern District of Texas, May 5, 2020

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
20-20181	JC Penney Properties, LLC	EDTX	EDTX	Delaware	Independent
20-20182	**JC Penney Company, Inc.**	**EDTX**	**EDTX**	**Delaware**	**Affiliate**
20-20183	JC Penney Corporation, Inc.	EDTX	EDTX	Delaware	Affiliate
20-20184	JC Penney Direct Marketing Services LLC	EDTX	EDTX	Delaware	Affiliate
20-20185	JC Penney Export Merchandising Corp.	EDTX	EDTX	Delaware	Affiliate
20-20186	JC Penney International, Inc.	EDTX	EDTX	Delaware	Affiliate
20-20187	JC Penney Purchasing Corporation	EDTX	EDTX	New York	Affiliate
20-20188	JCP Construction Services, Inc.	EDTX	EDTX	Delaware	Affiliate
20-20189	JCP Media Inc.	EDTX	EDTX	Delaware	Affiliate
20-20190	JCP New Jersey, LLC	EDTX	EDTX	Delaware	Affiliate
20-20191	JCP Procurement, Inc.	EDTX	EDTX	Delaware	Affiliate
20-20192	JCP Real Estate Holdings, LLC	EDTX	EDTX	Delaware	Affiliate
20-20193	JCP Realty, LLC	EDTX	EDTX	Delaware	Affiliate
20-20194	JCP Telecom Systems, Inc.	EDTX	EDTX	Delaware	Affiliate
20-20195	JC Penney Puerto Rico, Inc.	EDTX	EDTX	Puerto Rico	Affiliate
20-20196	JC Penney Services, LLC	EDTX	EDTX	Delaware	Affiliate
20-20197	jcpSSC, Inc.	EDTX	EDTX	Delaware	Affiliate
20-20198	Future Source LLC	EDTX	EDTX	New York	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

5. Phi

Phi provided helicopter transportation services to the petroleum exploration and production industry.[120] The company was based in Lafayette, Louisiana, which is in the Western District of Louisiana. Five Phi group entities filed free fall bankruptcy cases in the Northern District of Texas on March 14, 2019. On their petitions, four group members reported their principal places of business and principal assets to be in Lafayette, Louisiana. The fifth reported it principal place of business and principal asset to be in Phoenix Arizona. All five entities in the group were formed in Louisiana. As a result, the group had no apparent basis for a claim to venue in the Northern District of Texas.

The first entity in the group to file—the venue hook—was Phi Air Medical, L.L.C. That entity had been continuously formed in Louisiana since 1997 and the petition indicated its principal place of business and principal assets were in Lafayette at the time of filing. Phi Air Medical nevertheless checked both venue-claim boxes on the petition. The first box indicated that Phi Air Medical "had its domicile, principal place of business, or principal assets in [the Northern District of Texas] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district." That claim was apparently false. On its 10-K filed for the year ending December 31, 2017—one year and 73 days before filing—Phi, Inc. listed its principal office in Lafayette,

[120] Phi, Inc., Annual Report (Form 10-K), at 2 (Mar. 18, 2019).

Louisiana, its "principal facilities" in Lafayette, Louisiana, and properties at ten other locations in the U.S., none of which were in the Northern District of Texas.[121] Phi listed nine of those ten facilities on its 10-K for the year ending December 31, 2018—73 days before filing—which it filed four days after filing.[122] Phi was not in the process of moving out of the Northern District of Texas because it had never moved in.

The second box indicated that the case of an affiliate was already pending in the Northern District of Texas. But Phi Inc.'s 10-K for the year ended December 31, 2018, which Phi filed with the SEC four days after filing—listed the only the five entities shown in Table 7 as bankruptcy filers.[123] Phi Air Medical had the lowest case number among them, indicating that it filed first. Thus, Phi Air Medical had no basis for its claim that a case of its affiliate was pending in the Northern District of Texas when it filed. Nor did it apparently have any other claim to venue in the Northern District of Texas.

Table 7. Phi, filed in the Northern District of Texas, March 14, 2019

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
19-30922	PHI Air Medical, L.L.C.	DAZ	DAZ	Louisiana	Both
19-30923	**PHI, Inc.**	**WDLA**	**WDLA**	**Louisiana**	**Affiliate**
19-30924	AM Equity Holdings, L.L.C.	WDLA	WDLA	Louisiana	Affiliate
19-30925	PHI Helipass, L.L.C.	WDLA	WDLA	Louisiana	Affiliate
19-30926	PHI Tech Services, Inc.	WDLA	WDLA	Louisiana	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

6. Rex Energy Corporation

Rex Energy was engaged in drilling and exploration for natural gas in the Appalachian Basin.[124] The company was based in State College, Pennsylvania, which is in the Middle District of Pennsylvania. Four Rex Energy group entities filed free fall bankruptcy cases in the Western District of Pennsylvania on May 18, 2018. On their petitions, all four group members reported their principal place of business and principal assets to be in State College, Pennsylvania. All four group members were formed in Delaware. As a result, the group had no apparent basis for its claim to venue in the Western District of Pennsylvania.

The first entity in the group to file—the venue hook—was R.E. Gas Development, LLC. That entity had been continuously formed in Delaware since 2007 and the petition indicated its principal place of business and principal assets were in State College, Pennsylvania at the time of filing—in the Middle District of Pennsylvania. R.E. Gas Development LLC nevertheless checked the venue-claim box on the petition indicating that it "had its domicile, principal place of business, or principal assets in [the Western

[121] Phi, Inc., Annual Report (Form 10-K), at 25 (Feb. 23, 2018).

[122] Phi, Inc., Annual Report (Form 10-K), at 29 (Mar. 18, 2019).

[123] *Id.*, at 49 (Mar. 18, 2019).

[124] Rex Energy Corp., Annual Report (Form 10-K), at 6 (Apr. 13, 2018).

District of Pennsylvania] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district."[125]

Nor did R.E. Gas Development LLC have its principal place of business or principal assets in the Western District of Pennsylvania during the 180 days before filing and move them out. On its Statement of Financial Affairs filed in the bankruptcy case, R.E. Gas Development LLC reported no significant transfers of assets out of the Western District in the two years before bankruptcy.[126] On its 10-K filed for the year ending December 31, 2017—four-and-a-half months before the bankruptcy filing—Rex Energy Corporation listed its principal executive office in State College, Pennsylvania and stated that it was "headquartered in State College, Pennsylvania and [had] a regional office in Cranberry, Pennsylvania."[127] (Cranberry is located in the Western District of Pennsylvania.) R.E. Gas Development, LLC continued using the Cranberry office during the 180 days before bankruptcy.[128]

About eight hours after filing its petition, R.E. Gas Development filed a motion to amend its petition to show Butler County—a county in the Western District of Pennsylvania—as the location of its principal assets. Based on that prompt amendment and

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[125] That claim was an apparent contradiction of R.E. Gas Development's answer in item 4 of the petition. Our own analysis of locations of the assets on R.E. Gas Development's schedules 45 days after filing concluded that most of those assets were in the Western District of Pennsylvania. Thus, R.E. Gas Development's venue claim was correct and answer to item 4 incorrect.

[126] Statement of Financial Affairs at 135, *In re* R.E. Gas Dev., LLC, No. 18-22032 (W.D. Pa. July 2, 2018), ECF No. 385 (showing only nominal transfers).

[127] Cranberry, Pennsylvania is in the Western District of Pennsylvania, but "headquarters" is more suggestive of a principal place of the business than is "regional office." Insuranceopedia, Regional Office, https://www.google.com/search?q=what+is+a+regional+office&sca_esv=f0e5bc80489bf8d7&sxsrf=ADLYWIIQodq-ofMU6nCHrItAV6NiPefhnQ%3A1719620419808&source=hp&ei=Q1N_ZoLJLuuVwbkPgYmmMA&iflsig=AL9hbdgAAAAAZn9hU95rRWnBU3MyKHf2lhBNLnp1AfI-&oq=what+is+a+re&gs_lp=Egdnd3Mtd2l6Igx3aGF0IGlzIGEgcmUqAggAMgsQABiABBiRAhiKBTILEAAYgAQYkQIYigUyCBAAGIAEGLEDMggQABiABBixAzIIEAAYgAQYsQMyCxAAGIAEGJECGIoFMgUQABiABDIFEAAYgAQyCBAAGIAEGLEDMggQABiABBixA0iKaFDtJ1inUnACeACQAQCYAWygAYQHqgEEMTAuMrgBAcgBAPgBAZgCDqACuAeoAgrCAgcQIxgnGOoCwgIKECMYgAQYJxiKBcICBBAjGCfCAgsQABiABBixAxiDAcICERAuGIAEGLEDGNEDGIMBGMcBwgIKEAAYgAQYQxiKBcICDhAAGIAEGLEDGIMBGIoFwgIQEAAYgAQYsQMYQxiDARiKBZgDApIHBDEyLjKgB410&sclient=gws-wiz ("A regional office is a unit of a company that is responsible for selling its products in an area that isn't directly serviced by its main office or headquarters. It is typically headed by a branch manager.").

[128] Letter from Rosemary Chiavetta Secretary, Pennsylvania Public Utility Commission to Richard Watson, R.E. Gas Development, LLC, *DR Re Gas 2294557.docx* (Apr. 17, 2018), Document Search, PAPUC, https://www.puc.pa.gov/search/document-search/?DocketNumber=A-2012-2294557&ufprt=1B6711A30762380EB6E9AFB73F63758401E0AA8DFC790B3C8863C83E9147CE0E4860FC6C7FF6A98E6B351DA0780D6DFF475D060C4801ADFD0CBB10908696E094C7B8A302B7D4C318B07DC4FC5427234CDC6219D79CC69BBED49EAB5B35F953CAB920704D082F1C09B6162F77545E8D35D036A2B417618CABD188374B6F2D181B5CA43420356AA971ED56F836C840AE25EE8888A295FFF4D18F0EC21150FC828900E2748B61B83FF437BC571FCCE1C39513AC1825E34C6AC2E75563C9B456B8B1#search-results (last visited July 23, 2024) (letter to the Cranberry office); Letter from Michael Endler, Vice-President, R.E. Gas Development, LLC to Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission (May 10, 2018), PAPUC, https://www.puc.pa.gov/pcdocs/1568198.pdf (last visited July 23, 2024) (response letter from the Cranberry office).

our own analysis showing a majority of R.E. Gas Development, LLC's assets to be in the Western District of Pennsylvania,[129] I conclude that entity's claim to venue in the Western District of Pennsylvania was correct. It appeared to be false only because the entity misstated the location of its principal assets on its petition. Although the error was undoubtedly inadvertent and corrected on the same day, the case is relevant to this study because the lawyer and officer both signed an erroneous venue statement.

Table 8. Rex Energy Corporation, filed in the Western District of Pennsylvania, May 18, 2018

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
18-22032	R.E. Gas Development, LLC	MDPA	MDPA*	Delaware	Independent
18-22033	**Rex Energy Corporation**	**MDPA**	**MDPA**	**Delaware**	**Affiliate**
18-22034	Rex Energy Operating Corp.	MDPA	MDPA	Delaware	Affiliate
18-22035	Rex Energy I, LLC	MDPA	MDPA	Delaware	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.
*So stated on the petition. The entity's principal assets were actually in the WDPA.

7. Walter Investment

Walter Investment Management Corp. (Walter Investment) was an "independent servicer and originator of mortgage loans and servicer of reverse mortgage loans."[130] Eleven months before filing in the Southern District of New York, the company reported on Form 10-K that its principal executive offices were in Tampa, Florida—in the Middle District of Florida—and that it owned no property in New York.[131] At filing, Walter Investment reported its principal executive offices were in Fort Washington, Pennsylvania.[132]

Walter Investment filed a prepackaged bankruptcy case in the Southern District of New York on November 30, 2017.[133] On its petition, Walter Investment reported its principal place of business and principal assets to be in Fort Washington, Pennsylvania.[134] Walter Investment was incorporated in Maryland at the time it filed its petition and had been incorporated there since 1997.[135] Walter Investment's petition denied that any bankruptcy cases were pending or being filed by affiliates, and Walter Investment did not

[129] *Supra*, note 125.

[130] Walter Inv. Mgmt. Corp., Annual Report (Form 10-K), at 6 (Mar. 14, 2017).

[131] *Id.* at 1, 45.

[132] Walter Inv. Mgmt. Corp., Current Report (Form 8-K), at 1 (Dec. 1, 2017).

[133] BRD, *supra* note 67. The search is "Data access," then Case summaries," and then "Walter Investment Management Corp."

[134] Voluntary Petition for Non-Individuals Filing for Bankruptcy at 1, *In re* Walter Investment Management Corp., No. 17-13446 (S.D.N.Y. Nov. 30, 2017), ECF No. 1.

[135] *Id.,* at 1 ("State or other jurisdiction of incorporation or organization Maryland"); Maryland.gov, *Maryland Business Express*, MARYLAND.GOV, https://egov.maryland.gov/BusinessExpress/EntitySearch/Business (last visited Jul. 22, 2024) (search for "Business Name" "Walter Investment Management Corp." General Information" showing "Date of Formation/Registration" as 06/10/1997).

claim affiliate venue. As a result, Walter Investment had no apparent basis for its claim to venue in the Southern District of New York.

Walter Investment changed its name to Ditech.[136] In a 10-K for the year ending one month after the bankruptcy filing, Ditech again reported that its principal executive offices were in Fort Washington, Pennsylvania, and that it owned no property in New York.[137] Thus it is highly unlikely that Walter Investment had a principal place of business or principal assets in the Southern District of New York at any relevant time.

Table 9. Walter Investment, filed in the Southern District of New York, November 30, 2017

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
17-13446	**Walter Investment Management Corp.**	**EDPA**	**EDPA**	**Maryland**	**Independent**

Note: Walter Investment Management Corp. is both the venue hook and the 10-K filer.

8. Midstates Petroleum

Midstates Petroleum was an independent oil exploration and production company.[138] The company was based in Tulsa, Oklahoma, which is in the Northern District of Oklahoma. Two Midstates Petroleum group entities filed prenegotiated bankruptcy cases in the Southern District of Texas on April 30, 2016. On their petitions, the two group members reported their principal places of business and principal assets to be in Tulsa, Oklahoma. Both entities were formed in Delaware. As a result, the group had no apparent basis for a claim to venue in the Southern District of Texas.

The first entity in the group to file—the venue hook—was Midstates Petroleum Company, Inc. That entity was the 10-K filer. It had been continuously incorporated in Delaware since 2011 and the petition indicated its principal place of business and principal assets were in Tulsa, Oklahoma at the time of filing. Midstates Petroleum Company, Inc. nevertheless checked both venue-claim boxes on the petition.

The first box indicated that Midstates Petroleum Company, Inc. "had its domicile, principal place of business, or principal assets in [the Southern District of Texas] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district." To meet that requirement, Midstates Petroleum Company, Inc. would have to have had its principal place of business or principal assets in the Southern District of Texas in the 180 days before filing. But nothing suggests Midstates Petroleum Company, Inc. ever had its principal place of business or principal assets in the Southern District of Texas. To the contrary, on its 10-K filed one month before bankruptcy for the year ending four months before bankruptcy, Midstates Petroleum Company, Inc. listed its "principal executive office" and "headquarters" to be in Tulsa, Oklahoma.[139]

[136] Ditech Holding Corp., Annual Report (Form 10-K), at 6 (Apr. 16, 2018).

[137] *Id.* at 50 (reporting that Ditech had properties in eight states, not including New York).

[138] Midstates Petroleum Co., Inc., Annual Report (Form 10-K), at 7 (Mar. 30, 2016).

[139] Midstates Petroleum Co., Inc., Annual Report (Form 10-K), at cover page, 7 (Mar. 30, 2016).

Although Midstates Petroleum Company, Inc. owned substantial properties in Texas at the time of filing, the corporation was not in the process of moving them out of the Southern District of Texas in the 180 days prior to bankruptcy. The company's 10-K indicated that the company was divesting its properties in Louisiana but made no mention of divestment in Texas.[140]

The second box indicated that the case of an affiliate was pending in the Southern District of Texas when Midstates Petroleum Company, Inc. filed. But in response to the petition question "Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?" Midstates Petroleum Company, Inc. listed only itself and Midstates Petroleum Company LLC. In addition, Midstates Petroleum's 8-K reporting the bankruptcy filing indicated that only the two entities listed in Table 10 filed. Midstates Petroleum Company, Inc. had the lower case number, indicating that it filed first. Thus, Midstates Petroleum Company, Inc. had no apparent basis for its claim that a case of an affiliate was pending in the Southern District of Texas when it filed there. Nor did it have any other apparent claim to venue in the Southern District of Texas.

Table 10. Midstates Petroleum, filed in the Southern District of Texas, April 30, 2016

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
16-32237	**Midstates Petroleum Company, Inc.**	**NDOK**	**NDOK**	**Delaware**	**Both**
16-32238	Midstates Petroleum Company LLC	NDOK	NDOK	Delaware	Both

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

9. Stone Energy

Stone Energy was "an independent oil and natural gas company engaged in the acquisition, exploration, exploitation, development and operation of oil and gas properties."[141] The company's "corporate headquarters" were in Lafayette, Louisiana which is in the Western District of Louisiana. Stone Energy had "additional offices" in five cities, one of which was Houston, Texas.[142] Three of the group's entities filed prepackaged bankruptcy cases in the Southern District of Texas on December 14, 2016. On their petitions, each group member reported its principal place of business and principal assets to be in Lafayette, Louisiana. All three entities were formed in Delaware. As a result, the group had no apparent basis for a claim to venue in the Southern District of Texas.

The first entity in the group to file—the venue hook—was Stone Energy Corporation, the 10-K filer. Stone Energy Corporation was incorporated in 1993 as a Delaware corporation and remained a Delaware corporation at the time it filed. Stone Energy Corporation's board resolution authorizing the filing was attached to the petition. It recited that Stone Energy Corporation was a Delaware corporation. Its petition indicated

[140] *Id.* at 7 ("In April 2015, the Company completed the divestiture of its remaining producing properties in Louisiana with the sale of its Dequincy assets.").

[141] Stone Energy Corp., Annual Report (Form 10-K), at 1 (Feb. 26, 2016).

[142] *Id.*

its principal place of business and principal assets were in Lafayette, Louisiana at the time of filing.

Stone Energy Corporation nevertheless checked both venue-claim boxes on the petition. The first indicated that Stone Energy Corporation "had its domicile, principal place of business, or principal assets in [the Southern District of Texas] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district." That claim was apparently false. On its 10-K filed for the year ending December 31, 2015—eleven months before bankruptcy—Stone Energy Corporation listed its "principal executive offices" and "headquarters" to be in Lafayette, Louisiana.[143] It reported the same on it 10-K filed for the year ending December 31, 2017—slightly over a year after the bankruptcy filing.

Although Stone Energy Corporation owned substantial properties in Texas at the time of filing, the corporation was not in the process of selling those properties in the 180 days prior to bankruptcy. The 10-K filed a year after bankruptcy indicated that the company had divested properties in the Appalachian Basin[144] but made no mention of divestment in Texas. Stone Energy Corporation closed its offices in Houston, Texas and Morgantown, West Virgina sometime between December 31, 2015, and December 31, 2017.[145] But its headquarters and principal executive offices remained in Lafayette, Louisiana throughout that period.

The second box indicated that the case of an affiliate was already pending in the Southern District of Texas. Had that been true, Stone Energy Corporation would have had to identify the affiliate in response to the petition question "[a]re any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?" In response to that question, Stone Energy Corporation listed only the three corporations on Table 10. Stone Energy Corporation had the lowest case number of the three, indicating that it filed first. Thus, Stone Energy Corporation had no apparent basis for its claim that a case of its affiliate was pending in the Southern District of Texas when it filed. Nor did it have any other apparent claim to venue in the Southern District of Texas.

One of the lawyers in Stone Energy pointed out to me that (1) Stone Energy still had an office in Houston at the time it filed, and (2) the court was aware of the venue issue before the First Day Hearing and mentioned that the court had changed "proper venue" to "allowed venue" in some documents because the court did not "know if this is the best venue."[146] Ultimately, the court confirmed the plan, finding that venue in the Southern District of Texas was "allowed."[147] I interpret that as an acknowledgement by the court that

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[143] Stone Energy Corp., Annual Report (Form 10-K), at cover page, 1 (Feb. 26, 2016).

[144] Stone Energy Corp., Annual Report (Form 10-K), at 39 (Mar. 9, 2018) ("In connection with our reorganization, we entered into a Purchase and Sale Agreement . . . (the 'Tug Hill PSA') . . . to sell the Appalachia Properties to Tug Hill for $360 million in cash.").

[145] *Id.* at 1 (showing only Lafayette and New Orleans).

[146] *See* First Day Hearing Transcript, *supra* note 9, at 69.

[147] *Supra* note 99 and accompanying text.

venue in the district was improper, but that the court had the right to retain an improperly venued case.[148]

Table 11. Stone Energy Corporation, filed in the Southern District of Texas, December 14, 2016

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
16-36390	**Stone Energy Corporation**	**WDLA**	**WDLA**	**Delaware**	**Both**
16-36391	Stone Energy Offshore, L.L.C.	WDLA	WDLA	Delaware	Both
16-36392	Stone Energy Holding, L.L.C.	WDLA	WDLA	Delaware	Both

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

To summarize, the venue claims in all nine False Venue Claim cases appeared to be false, but in one, Rex Energy, the debtor had a valid claim to venue and quickly amended its petition to clarify that claim. Jason Industries made a venue claim in conflict with the facts stated in its petition. Based on its schedules, however, Jason Industries' principal assets claim to venue in White Plains would have been implausible; only 39% of its assets were in White Plains. In Stone Energy, the debtor made a false venue claim, but the court was apparently aware of the problem before the first day hearings and chose to retain the case. In seven of the nine cases, the debtors filed false venue claims and in the other two, the petitions initially filed misstated the facts on which the venue claim would have been based. In each, an authorized representative of each of the filing entities signed an apparently false statement regarding venue under penalty of perjury.

B. The Implausible Venue Cases

In six cases, entity groups filed in the Southern District of Texas, even though none of the sixty-nine members of the six groups stated its principal place of business or principal assets were in the Southern District of Texas at filing. All but two of the sixty-nine had their principal place of business and principal assets in the Northern District of Texas at filing. Those two exceptions had principal places of business or principal assets outside of Texas.[149] I classified the venue claims of these six groups in the Southern District of Texas as implausible, rather than false, because each of the six groups included at least one Texas entity.

Even though none of the six groups had a venue-relevant presence in the Southern District of Texas at the time they filed, each of the six groups could have claimed venue on the implausible theory that an entity incorporated in a state is entitled to file in any district in the state. The claim's lack of merit was discussed in Part III.B.

[148] *See supra*, Part II.B. (arguing that bankruptcy courts do not have the right to retain improperly venued cases).

[149] SPT Distribution Company, Inc., a member of the CEC Entertainment group, had its principal place of business and principal assets in Kansas. LiveWatch Security, LLC, a member of the Monitronics group had its principal place of business in Illinois and its principal assets in the Northern District of Texas.

Table 12. The Implausible Venue Cases.

District of filing	Case name	Number of entities	Number of Texas entities	Bankruptcy filing date	Principal place of business and assets
SDTX	Azure Midstream Partners, LP	12	6	1/30/2017	NDTX
SDTX	Basic Energy Services, Inc. (2021)	13	4	8/17/2021	NDTX
SDTX	CEC Entertainment, Inc.	17	7	6/24/2020	NDTX
SDTX	EXCO Resources, Inc.	15	2	1/15/2018	NDTX
SDTX	FTS International, Inc.	3	2	9/22/2020	NDTX
SDTX	Monitronics International, Inc.	9	1	6/302019	NDTX
	Total	69	22		

The claim lacks merit for two reasons. First, the claim is grounded in the word "domicile" in the venue statute. But one cannot be domiciled in four districts at once—particularly if one has absolutely no presence in three of them. Second, the statute provides for venue in *the* district in which the debtor is domiciled. Use of the singular indicates that Congress understood entities to have a domicile in only a single district. The correct interpretation of "domicile" in 28 U.S.C. § 1408 is as a reference to *the* district in which the filer has its greatest presence in its incorporation state.

1. Azure Midstream

Azure Midstream generated "revenues by charging fees for gathering, transporting, treating and processing natural gas, transloading crude oil and selling or delivering [natural gas liquids] to third parties."[150] All twelve members of the Azure Midstream group reported their principal places of business and principal assets to be in the Northern District of Texas. Oddly, the first entity to file was not a Texas entity, but a Delaware limited partnership. That entity claimed venue based on (1) domicile, principal place of business or principal assets in the Southern District of Texas and (2) the case of an affiliate pending in that district. Absent a move-out, both claims were apparently wrong.

Our research discovered no evidence of a move out. To the contrary, Azure Midstream Partners, LP filed a 10-K ten months before bankruptcy for the year ending thirteen months before bankruptcy indicating that its principal executive offices were in Dallas.[151] It listed property in seven Texas counties, all of them in the Eastern District of Texas.[152] Azure could not have moved out of the Southern District of Texas because it never moved in.

The five Texas LLC's and one limited partnership in the group were domiciled in Texas because they formed under Texas law. But their domiciles were in the Northern District of Texas because each had its greatest presence in that district. Each reported its principal places of business and principal assets to be in that district.

[150] Azure Midstream Partners, LP, Annual Report (Form 10-K), at 6 (Mar. 30, 2016).

[151] Azure Midstream Partners, LP, Annual Report (Form 10-K), at 1 (Mar. 30, 2015).

[152] Id. at 9-13.

Table 13. Azure Midstream, filed in the Southern District of Texas, January 30, 2017

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
17-30461	**Azure Midstream Partners, LP**	**NDTX**	**NDTX**	**Delaware**	**Both**
17-30464	Azure Midstream Partners GP, LLC	NDTX	NDTX	Delaware	Affiliate
17-30465	Marlin Midstream, LLC	NDTX	NDTX	Texas	Both
17-30466	Marlin Logistics, LLC	NDTX	NDTX	Texas	Both
17-30467	Marlin G&P I, LLC	NDTX	NDTX	Texas	Both
17-30469	Azure Holdings GP, LLC	NDTX	NDTX	Delaware	Affiliate
17-30470	Azure ETG, LLC	NDTX	NDTX	Delaware	Affiliate
17-30471	Azure TGG, LLC	NDTX	NDTX	Delaware	Affiliate
17-30472	Marlin Midstream Finance Corporation	NDTX	NDTX	Delaware	Affiliate
17-30473	Murvaul Gas Gathering, LLC	NDTX	NDTX	Texas	Affiliate
17-30474	Talco Midstream Assets, Ltd.	NDTX	NDTX	Texas	Affiliate
17-30475	Turkey Creek Pipeline, LLC	NDTX	NDTX	Texas	Both

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

2. Basic Energy

Basic Energy "provide[d] wellsite services in the United States to oil and natural gas production companies."[153] All twelve members of the Basic Energy group reported their principal places of business and principal assets to be in the Northern District of Texas. As with Azure Midstream, the first entity to file—Basic Energy Services, L.P.—was not a Texas entity but a Delaware limited partnership.

Our research discovered no evidence of a move out. To the contrary, Basic Energy Services, Inc. filed a 10-K four and a half months before bankruptcy for the year ending eight and a half months before bankruptcy indicating that its principal executive offices were in Fort Worth—in the Northern District of Texas.[154] Three months after filing, Basic Energy Services, Inc. filed a report with the Texas Secretary of State indicating that its principal office and principal place of business were in Fort Worth.[155] Basic Energy sold "substantially all of the Company's assets" immediately after filing. Although Basic Energy's operations were spread widely across several states, and Basic Energy's petition showed its principal assets to be in the Northern District of Texas, nearly half the sale price was attributed to Basic Energy's California operations.[156] That suggests that Basic Energy's principal assets may have been in California.[157] We found no indication that Basic Energy moved out of the Southern District of Texas in the 180 days before bankruptcy.

[153] Basic Energy Serv., Inc., Annual Report (Form 10-K), at 1 (Mar. 31, 2021).

[154] *Id.*

[155] Basic Energy Serv., Inc., Texas Franchise Tax Public Information Report (Nov. 15, 2021).

[156] Basic Energy Serv. Inc., Form 8-K at 2 (showing California sale price of $43 million and $11 million and non-California sale price of $56.65 million and $5 million).

[157] *Id.* at 9-13.

Table 14. Basic Energy, filed in the Southern District of Texas, August 17, 2021

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
21-90001	Basic Energy Services, L.P.	NDTX	NDTX	Delaware	Independent
21-90002	**Basic Energy Services, Inc.**	**NDTX**	**NDTX**	**Delaware**	**Affiliate**
21-90003	C&J Well Services, Inc.	NDTX	NDTX	Delaware	Affiliate
21-90004	KVS Transportation, Inc.	NDTX	NDTX	California	Affiliate
21-90005	Indigo Injection #3, LLC	NDTX	NDTX	Texas	Affiliate
21-90006	Basic Energy Services GP, LLC	NDTX	NDTX	Delaware	Affiliate
21-90007	Basic Energy Services LP, LLC	NDTX	NDTX	Delaware	Affiliate
21-90008	Taylor Industries, LLC	NDTX	NDTX	Texas	Affiliate
21-90009	SCH Disposal, L.L.C.	NDTX	NDTX	Texas	Affiliate
21-90010	Agua Libre Holdco LLC	NDTX	NDTX	Delaware	Affiliate
21-90011	Agua Libre Asset Co LLC	NDTX	NDTX	Delaware	Affiliate
21-90012	Agua Libre Midstream LLC	NDTX	NDTX	Delaware	Affiliate
21-90013	Basic ESA, Inc.	NDTX	NDTX	Texas	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

The four Texas entities in the group—three LLCs and a corporation—were domiciled in Texas because they formed under Texas law. But their domiciles were in the Northern District of Texas because each had its greatest presence in the Northern District. Each had both its principal place of business and its principal assets in the Northern District of Texas.

3. CEC Entertainment

CEC Entertainment provided a global network of family entertainment and dining centers.[158] Sixteen of the seventeen members of the CEC Entertainment group reported their principal places of business and principal assets to be in the Northern District of Texas. The first entity to file—Peter Piper Texas, LLC—was a Texas LLC. It stated on its petition that its principal place of business and principal assets were in Irving Texas, a suburb of Dallas—in the Northern District of Texas. Even though it was formed under Texas law, venue was not proper for Peter Piper Texas, LLC in the Southern District of Texas because its greatest presence was in the Northern District of Texas.

The seven Texas entities in the CEC Entertainment group—six corporations, one LLC and one limited partnership—were domiciled in Texas because they formed under Texas law. For six, their domicile was in the Northern District of Texas because they had their greatest presence in that district; both their principal place of business and their principal assets were in the district.

The seventh, SPT Distribution Incorporated, reported on its petition that its principal place of business and principal assets were in Topeka, Kansas. Because it was formed under Texas law, it was domiciled in Texas. That domicile may have been in the Northern District of Texas because its last Texas annual report stated that its principal office and

[158] CEC Ent., Inc., Annual Report (Form 10-K), at 5 (Mar. 12, 2020).

principal place of business were both in Irving, Texas—in the Northern District of Texas.[159] That domicile may have been in the Western District of Texas based on the corporation's registered office and registered agent in Austin, Texas. But SPT Distribution apparently had no presence at all in Southern District of Texas.[160]

Table 15. CEC Entertainment, filed in the Southern District of Texas, June 24, 2020

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
20-33162	Peter Piper Texas, LLC	NDTX	NDTX	Texas	Both
20-33163	**CEC Entertainment, Inc.**	**NDTX**	**NDTX**	**Kansas**	**Both**
20-33164	Peter Piper, Inc.	NDTX	NDTX	Arizona	Both
20-33165	BHC Acquisition Corporation	NDTX	NDTX	Texas	Both
20-33166	CEC Entertainment Concepts, L.P.	NDTX	NDTX	Texas	Both
20-33167	CEC Entertainment Holdings, LLC	NDTX	NDTX	Nevada	Both
20-33168	CEC Entertainment International, LLC	NDTX	NDTX	Delaware	Both
20-33169	CEC Entertainment Leasing Company	NDTX	NDTX	Delaware	Both
20-33170	CEC Leaseholder, LLC	NDTX	NDTX	Delaware	Both
20-33171	CEC Leaseholder #2, LLC	NDTX	NDTX	Delaware	Both
20-33172	Hospitality Distribution Incorporated	NDTX	NDTX	Texas	Both
20-33173	Peter Piper Holdings, Inc.	NDTX	NDTX	Delaware	Both
20-33174	Peter Piper Mexico, LLC	NDTX	NDTX	Arizona	Both
20-33175	Queso Holdings Inc.	NDTX	NDTX	Delaware	Both
20-33176	SB Hospitality Corporation	NDTX	NDTX	Texas	Both
20-33177	SPT Distribution Company, Inc.	Out of state	Out of state	Texas	Both
20-33178	Texas PP Beverage, Inc.	NDTX	NDTX	Texas	Both

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

Neither CEC Entertainment nor Peter Piper's Pizza moved its principal place of business or principal assets out of the Southern District of Texas in the 180 days before bankruptcy. On its 10-K filed 178 days before bankruptcy, CEC Entertainment reported that it leased 55,257 square feet of office space in Irving, Texas that it used as its headquarters and 166,432 square feet of warehouse space in Topeka, Kansas that served as a "storage, distribution and refurbishing facility."[161] Peter Piper Pizza's corporate headquarters were in Phoenix, Arizona.[162] Thus, neither CEC Entertainment's principal place of business or principal assets were in the Southern District of Texas at the beginning of the 180 day period.

[159] SPT Distrib. Co., Texas Franchise Tax Public Information Report (Dec. 31, 2019).

[160] SPT Distribution operating a distribution center in Topeka, Kansas. On its schedules filed in the bankruptcy case, the only utility security deposit listed was with Kansas Gas Service. Schedule Of Assets and Liabilities for SPT Distribution Company, Inc. at 21, In re CEC Entertainment, Inc., et al., No. 20-33163 (S.D. Tex. Aug. 8, 2020), ECF No. 540.

[161] CEC Entertainment, Inc, Annual Report (Form 10-K), at 23 (Mar. 12, 2020).

[162] *Id*.

4. EXCO Resources

EXCO Resources was "an independent oil and natural gas company engaged in the exploration, exploitation, acquisition, development and production of onshore U.S. oil and natural gas properties with a focus on shale resource plays."[163] The first entity to file was EXCO Resources Inc.—the 10-K filer and a Texas corporation. It stated on its petition that its principal place of business and principal assets were in Dallas, Texas—in the Northern District of Texas. A second Texas corporation—EXCO Holding MLP, Inc.— was the fourth group member to file. Both corporations were domiciled in the Northern District of Texas because both had their greatest presence in Texas that district. For each, its principal places of business and principal assets were in the Northern District of Texas.

Table 16. EXCO Resources, filed in the Southern District of Texas, January 15, 2018

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
18-30155	**EXCO Resources, Inc.**	**NDTX**	**NDTX**	**Texas**	**Independent**
18-30156	EXCO GP Partners Old, LP	NDTX	NDTX	Delaware	Affiliate
18-30157	EXCO Holding (PA), Inc.	NDTX	NDTX	Delaware	Affiliate
18-30158	EXCO Holding MLP, Inc.	NDTX	NDTX	Texas	Both
18-30159	EXCO Land Company, LLC	NDTX	NDTX	Delaware	Affiliate
18-30160	EXCO Midcontinent MLP, LLC	NDTX	NDTX	Delaware	Affiliate
18-30161	EXCO Operating Company, LP	NDTX	NDTX	Delaware	Affiliate
18-30162	EXCO Partners GP, LLC	NDTX	NDTX	Delaware	Affiliate
18-30163	EXCO Partners OLP GP, LLC	NDTX	NDTX	Delaware	Affiliate
18-30164	EXCO Production Company (PA), LLC	NDTX	NDTX	Delaware	Affiliate
18-30165	EXCO Production Company (WV), LLC	NDTX	NDTX	Delaware	Affiliate
18-30166	EXCO Resources (XA), LLC	NDTX	NDTX	Delaware	Affiliate
18-30167	EXCO Services, Inc.	NDTX	NDTX	Delaware	Affiliate
18-30168	Raider Marketing GP, LLC	NDTX	NDTX	Delaware	Affiliate
18-30169	Raider Marketing, LP	NDTX	NDTX	Delaware	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

EXCO Resources did not move its principal place of business or principal assets out of the Southern District of Texas in the 180 days before bankruptcy. The company filed 10-Ks for the period ended fifteen days before bankruptcy and one year before that date.[164] Both showed the company's principal executive offices to be at the same Dallas address that appeared on the petitions, and none of the company's "development and exploitation project areas" to be in the Southern District of Texas.[165]

[163] EXCO Res., Inc., Annual Report (Form 10-K), at 2 (Mar. 15, 2018).

[164] *Id.*, EXCO Res., Inc., Annual Report (Form 10-K), at 2 (Mar. 16, 2017).

[165] Compare *id.*, at 6 (map of "development and exploitation project areas" by country) with the map at Federal Bar Association, Southern District of Texas Chapter Boundaries, https://www.fedbar.org/southern-district-of-texas-chapter/southern-district-of-texas-chapter/southern-district-of-texas-chapter-boundaries/ (showing the development and exploitation area to be entirely outside the Southern District of Texas).

5. FTS International

FTS International, Inc. was "one of the largest providers of hydraulic fracturing services in North America."[166] All three members of the FTS International group reported their principal places of business and principal assets to be in the Northern District of Texas. The first of the three entities to file was the 10-K filer—a Delaware corporation. Its petition stated that it had both its principal place of business and principal assets in Fort Worth, Texas, which is in the Northern District of Texas. Thus, its claim of venue in the Southern District of Texas based on domicile, principal place of business or principal assets in that district was apparently unfounded.

Table 17. FTS International, filed in the Southern District of Texas, September 22, 2020

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
20-34622	FTS International, Inc.	NDTX	NDTX	Delaware	Independent
20-34623	FTS International Manufacturing, LLC	NDTX	NDTX	Texas	Both
20-34624	FTS International Services, LLC	NDTX	NDTX	Texas	Both

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

The other two group members to file were Texas LLCs. Both stated on their petitions that their principal places of business and principal assets were in Fort Worth, Texas—in the Northern District of Texas. Thus, both must have been claiming domicile in the Southern District of Texas based on their formation in Texas. Those claims were wrong because both had their greatest presence in Texas in the Northern District of Texas.

FTS International did not move its principal place of business or principal assets out of the Southern District of Texas in the 180 days before bankruptcy. On its 10-K filed eight months before bankruptcy, FTS International reported that its principal executive offices were in Fort Worth and its "principal properties include our district offices and manufacturing facilities."[167] None of those district offices or manufacturing facilities were in the Southern District of Texas.[168] FTS International had only a sales office in the Southern District of Texas.[169]

6. Monitronics International

Monitronics International did "business as Brinks Home Security and provide[d] residential customers and commercial client accounts with monitored home and business security systems, as well as interactive and home automation services."[170] All nine Monitronics group members reported their principal assets to be in Farmers' Branch, in the Northern District of Texas. Eight of the nine reported their principal places of business to

[166] FTS Int'l, Inc., Annual Report (Form 10-K), at 1 (Feb. 27, 2020).

[167] *Id.*

[168] *Id.* at 30.

[169] *Id.*

[170] Monitronics Int'l, Inc., Annual Report (Form 10-K), at 4 (Apr. 1, 2019).

be in Farmers' Branch, Texas and the ninth reported its principal place of business to be in Evanston, Illinois. The first entity to file was Monitronics International, Inc.—the 10-K filer. That entity was a Texas corporation with its principal place of business and principal assets in Farmers Branch. Thus, Monitronics International, Inc. had no apparent basis for venue in the Southern District of Texas.

Table 18. Monitronics International, filed in the Southern District of Texas, June 30, 2019

Case #	Group members	Principal place of business	Principal assets	Formation state	Venue claim
19-33650	**Monitronics International Inc.**	**NDTX**	**NDTX**	**Texas**	**Independent**
19-33651	Security Networks LLC	NDTX	NDTX	Florida	Affiliate
19-33652	MIBU Servicer Inc.	NDTX	NDTX	Delaware	Affiliate
19-33653	LiveWatch Security, LLC	Out of state	NDTX	Delaware	Affiliate
19-33654	Platinum Security Solutions, Inc.	NDTX	NDTX	Delaware	Affiliate
19-33655	Monitronics Canada, Inc.	NDTX	NDTX	Delaware	Affiliate
19-33656	MI Servicer LP, LLC	NDTX	NDTX	Delaware	Affiliate
19-33657	Monitronics Security LP	NDTX	NDTX	Delaware	Affiliate
19-33658	Monitronics Funding LP	NDTX	NDTX	Delaware	Affiliate

Note: The venue hook is the first entity listed. The 10-K filer appears in boldface.

Monitronics did not move its principal place of business or principal assets out of the Southern District of Texas in the 180 days before bankruptcy. On its 10-K for the year ending 180 days before bankruptcy, Monitronics reported its principal place of business to be at the Farmers' Branch address it listed on the petition.[171] That 10-K reported its properties to be 165,000 square foot executive offices in Farmers' Branch, 16,000 square feet of office space in Dallas, Texas, and other properties in Kansas and Illinois.[172] Thus, Monitronics had no principal assets in the Southern District of Texas 180 days before bankruptcy.

Seven of the other eight entities in the Monitronics group were incorporated in Delaware, and one was incorporated in Florida. Thus, Monitronics International was the only group member entitled to file anywhere in Texas.

C. The Filing Order Cases

As noted in the previous subpart, the Implausible Venue groups had claims to Texas venue based on the existence of group members formed in Texas. But in three of the six cases—Azure Midstream, Basic Energy, and FTS International—the first entity to file was not a Texas entity. Those entities had no apparent claim to venue, and so could not serve as a venue hook for other members of the group. The Texas entities should have filed first, because the Texas entities had the best claims to venue in the filing district. In two of the

[171] *Id.* at 1.

[172] *Id.* at 20.

nine False Venue Claim cases—Phi and Midstates Petroleum—the first entity to file claimed affiliate venue.

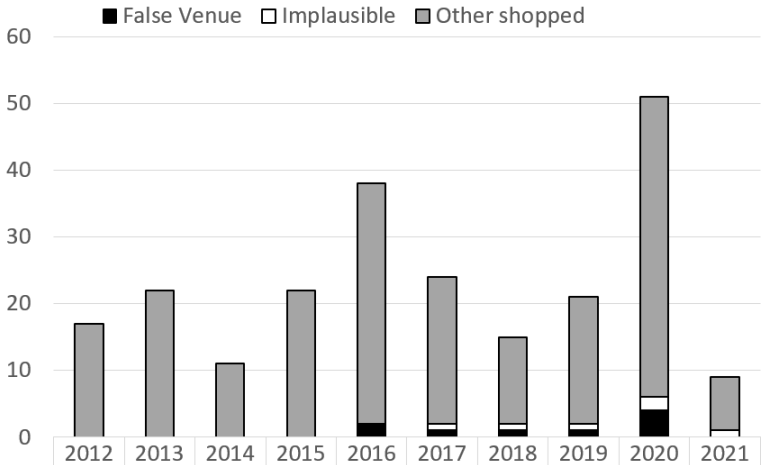
In several other cases, the entities also appeared to file in the wrong order. Three are worth mentioning: Global Geophysical (Southern District of Texas), GTT Communications (Southern District of New York), and Alpha Natural Resources (Eastern District of Virginia). In each of those three cases, the first entity to file had no apparent claim to venue, but a later-filing entity did. In Global Geophysical, seven group members had undisputable claims to venue in the target district, but two group members with disputable claims filed first. In GTT Communications, only one of the ten group members had an undisputable claim to venue in the target district, but it filed sixth. The first filer was an entity with no apparent claim to venue in the target district. The Alpha Natural Resources group consisted of 142 filers. Only one had an indisputable claim to venue in the target district. It was the 38th to file.

Only two explanations of this pattern seem plausible. The first is that CM/ECF is not assigning case numbers in the order in which the cases are filed. That, however, seems unlikely. The second is that, even though the lawfulness of their filings depend on the order of their filings, the lawyers who file the cases do not bother to order them correctly. The lawyers might rationally do that because they know the courts will not transfer or dismiss their cases even if venue is improper and objections are raised.

D. The Trend

Figure 2 shows that the No Venue Cases (the false venue and implausible venue cases) began in 2016 and have remained roughly steady as a percentage of all cases. That ratio was 5% in 2016, 8% in 2017, 13% in 2018, 10% in 2019, 12% in 2020, and 11% in 2021.[173]

Figure 2: The No Venue Cases by Year



	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Other shopped	17	22	11	22	36	22	13	19	45	8
Implausible	0	0	0	0	0	1	1	1	2	1
False Venue	0	0	0	0	2	1	1	1	4	0

[173] These ratios are calculated from the data in Figure 2.

False Venue Claims were significantly less likely to occur in the period 2012 through 2015 than in the period 2016 through 2021.[174] From these trend data, I conclude that (1) False Venue Claim Cases are likely a new phenomenon, and (2) unless circumstances change, they are likely to continue.

V. PARTICIPANT RESPONSIBILITY

Three parties participate in false venue claim scenarios: (1) the debtors' officers who sign the petitions under penalty of perjury, (2) the lawyers who sign the petitions as officers of the court, and (3) the judges who find venue in the district to be proper or allowed.

A. The Officers

The petitions in all the cases studied were prepared by inserting information into Official Form 201, Voluntary Petition for Non-Individuals Filing for Bankruptcy. The form requires a "[s]ignature of authorized representative of debtor." Of the venue hook petitions filed in the False Venue Claim cases, three were signed by chief executive officers, three were signed by chief financial officers, one was signed by a general counsel, one was signed by a chief restructuring officer, and one was signed by a "senior officer." The Form 201 each signed provided, immediately before their signatures, that:

> I have examined the information in this petition and have a reasonable belief that the information is true and correct.
>
> I declare under penalty of perjury that the foregoing is true and correct.

On the one hand, these nine officers were not bankruptcy lawyers, and would not necessarily understand why the venue was chosen. For example, when asked under oath why the Sorrento case was filed in Houston, Sorrento's Chief Restructuring Office replied, "the board of the Debtors was advised by counsel to file in Texas."[175] They signed apparently false statements, but whether they did so "knowingly" would be a question for the jury.

On the other hand, "[a] debtor has a paramount duty to consider all questions posed on statement or schedules carefully and see that question is answered completely in all respects."[176] If the signers did not understand what they were signing, they had a duty to ask their lawyers. The signers were top officers of large, public companies. They knew where their companies were located. Because their companies were not located in the districts where they would file, they must have at least suspected that their companies did not have their domicile, principal places of business, or principal assets in those districts.

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[174] Fisher's Exact Test p = 0.03.

[175] Motion to Transfer or Dismiss at 83, *In re* Sorrento Therapeutics, Inc., et al., No. 23-90085 (S.D. Tex. Mar. 17, 2024), ECF No. 2049.

[176] *In re* Braymer, 126 B.R. 499, 503 (Bankr. N.D. Tex 1991).

If so, the officers may not have had "a reasonable belief that the information is true and correct."[177]

B. The Lawyers

A bankruptcy lawyer signed each of the seventy-one petitions filed in the False Venue Claim Cases. As shown in Table 13, if local bankruptcy counsel was retained, local counsel did the signing.

Table 19. The Lawyers Who Signed the False Venue Claim Petitions

District	Case name	Bankruptcy attorneys	Local bankruptcy attorneys	Petition signer
D NJ	RTW Retailwinds, Inc.	Cole Schotz	None	Cole Schotz
WDPA	Rex Energy Corporation	Buchanan Ingersoll	None	Buchanan Ingersoll
NDTX	PHI, Inc.	DLA Piper	None	DLA Piper
SDTX	Denbury Resources Inc.	Kirkland Ellis	Jackson Walker	Local
SDNY	Jason Industries, Inc.	Kirkland Ellis	None	Kirkland Ellis
SDTX	J. C. Penney Company, Inc.	Kirkland Ellis	Jackson Walker	Local
SDTX	Midstates Petroleum Company, Inc.	Kirkland Ellis	Jackson Walker	Local
SDTX	Stone Energy Corporation	Latham Watkins	Porter Hedges	Local
SDNY	Walter Investment Management Corp.	Weil Gotshal	None	Weil Gotshal

By signing, the lawyers certified that they believed the venue claims they were making were warranted by existing law or a nonfrivolous argument for the establishment of new law and that the factual contentions had evidentiary support. Bankruptcy Rule 9011 provides:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition . . . an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> . . . .
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support.

Assuming the venue claims in the False Venue Claim cases were false, I find it difficult to believe that the lawyers would not have known that. More likely, the lawyers believed that no objections would be raised, and even if they were, the judges would retain the cases.

Model Rules of Professional Conduct, Rule 3.3(a) provides that "[a] lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." If

[177] *Id.*

the lawyers did make false statements of fact or law in these cases, they must now correct them, as Rex Energy did.

Normatively speaking, the lawyers seem to me more likely than the clients to bear responsibility for these apparently false venue claims. Lawyers choose venues strategically to get their cases before courts that will rule in their clients' favor on important issues. Few clients would even know what those issues were until their lawyers told them.

C. The Judges

Since the 1980s, a small and changing minority of bankruptcy judges or panels have competed to attract big bankruptcy cases.[178] They compete by adopting policies or making rulings that favor the parties that bring them cases. A large majority of bankruptcy judges have been unwilling to compete for cases, but also unwilling to take on their colleagues who do.

Some competing judges want the cases because they are important, intellectually interesting, or make the judges who decide them celebrities. But most have competed out of loyalty to the local bankruptcy communities for which the big cases are a bread-and-butter issue.[179]

Despite a mountain of evidence, few commentators have been willing to admit that the competition even exists.[180] At the opposite extreme, seven bankruptcy judges, acting as a "subcommittee" of the National Conference of Bankruptcy Judges "strongly disagree[d] with any suggestions by Professor LoPucki that any bankruptcy judges make rulings that are not justified by the facts and law."[181] If those judges are correct, and the judges who find that venue exists in the False Venue Claim Cases do so in good faith, based on the venue claims in the petitions, the petitioners may have committed fraud on the courts.[182]

In my view, the principal responsibility for false venue claims lies with the lawyers and the courts. The implicit understanding seems to be that if the lawyers bring a sufficiently large case to the court, the court will not turn it away.[183] That apparently includes false venue claim cases.

D. Houston's Improper Relationship Scandal

In 2021 and 2022, while this study was in progress, a scandal unfolded in the Southern District of Texas. In essence, the Chief Bankruptcy Judge was living with a

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[178] Part I, *supra*.

[179] *Supra* notes 32-36 and accompanying text (describing reasons some judges compete for big cases).

[180] *But see* Levitin, *supra* note 16, at 412 ("Judge shopping has combined with competition for cases to undermine the integrity of the chapter 11 process.").

[181] Michael et al., *supra* note 20, at 776.

[182] *Supra* notes 101-102 and accompanying text.

[183] Levitin, *supra* note 16, at 414 ("The implicit message: if you do not approve this case, future cases will go to other jurisdictions.").

lawyer who was practicing before the court. On its face, that scandal appears to be a personal lapse of judgment unrelated to bankruptcy court competition. It is not.

Violating statutes and rules is the essence of bankruptcy court competition. The Chief Bankruptcy Judge's improper relationship was only one of the many violations of statutes and rules that attracted high volumes of cases to Houston.[184] Without egregious violations of law, the Houston court would not have stood out from the other three courts—Delaware, White Plains, and Richmond—that were competing at that time. The Chief Bankruptcy Judge resigned in 2023, and the Houston court has toned down its law breaking. But the cases continue to flow to Houston. It takes less egregious law-breaking to keep a flow of big cases going than it does to start one.

Manhattan and Delaware, the two courts most successful in the competition for cases, both produced major scandals in their early years. In the 1980s, Manhattan Chief Bankruptcy Judge Burton Lifland began attracting cases to himself, despite the existence of a random draw that should have spread the cases among the four of five Manhattan bankruptcy judges sitting at that time. When the Eastern Airlines case was assigned to Lifland in 1989, the Wall Street Journal referred to Lifland's "knack for landing atop the biggest cases" and noted:

> While [Eastern's] choice of New York seemed predictable, the selection of Judge Lifland raised some eyebrows because of the uncanny way he has wound up assigned to the most important and visible bankruptcies. A number of bankruptcy lawyers question whether the lottery system of assigning cases among the seven judges in New York is entirely random.[185]

At that time, New York required a random draw. Professor Theodore Eisenberg calculated the odds of Judge Lifland getting so many cases in a random draw at six in one thousand.[186]

Delaware's experience was even more like that of the Southern District of Texas. From 1990 through 1996, under Chief Bankruptcy Judge Helen Balick, Delaware's share of big case bankruptcy went from zero to 87%, winning a second bankruptcy judge for the district. In January 1997, a Federal Judicial Center report revealed that local counsel had been calling judge Balick before filing their cases and learning from her whether she would assign the case to the new judge or keep it herself. She or the new judge would schedule first-day hearings before the cases were filed—ex parte communication. The resulting scandal was sufficiently intense that the Chief Judge of the District Court removed all big case bankruptcies from the bankruptcy court indefinitely. Judge Balick resigned nine months later, citing health reasons. In early 1998, once the heat was off, the district court quietly began returning the cases to the bankruptcy court.

The pattern is clear. If a bankruptcy court wants to make a big-case omelet, it has to break some laws.

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[184] LoPucki, *supra* note 1.

[185] Amy Dockser, *The Eastern Bankruptcy Filing: Chief Judge, Veteran of Big Cases, Gets Airline's Chapter 11 Petition*, WALL ST. J., Mar. 10, 1989.

[186] LoPucki, *supra* note 33, at 47.

VI. CONCLUSIONS

Eight of the nine False Venue Claim Cases appear to have been filed in improper venues. For venue to be proper, the venue hook must have its principal place of business, principal assets, or domicile in the district for more of the 180-day period before bankruptcy than in some other district. On the first page of the petition, the filer states the location of its principal place of business and its principal assets at filing. Each of the seventy-one debtors in the False Venue Claim Cases listed its principal place of business and principal assets as being in a district other than the one in which it filed. Our searches discovered no principal places of business or principal assets move-outs in the 180-day periods. An entity's domicile is in its state of incorporation and that state is a matter of public record. None of the seventy-one entities was incorporated in the state in which it filed.

To address the remaining uncertainty as to whether the venue claims in the nine cases were false—principally move-outs and clerical errors—I furnished a draft of this Article to the lawyers and, if I did not hear from the lawyers, to the officers who signed the petitions, along with a request that they advise me of any facts justifying the claims of venue made in those petitions. From respondents, I learned that in Rex Energy the venue hook had a factual basis for venue in the district where it filed, had misstated that basis in its petition, but had quickly amended its petition to correct the error. I also learned that in Jason Industries, the lawyers had an arguable basis for venue in the district in which it filed, but the petition misstated that basis. Thus, it appears that in seven of the nine cases, the debtors had no basis for their venue claims.

A few United States Bankruptcy Courts have been competing for the largest cases for more than three decades. Although false venue claims are focused in the Southern District of Texas, the other "magnet" court—Delaware—has seven judges who work under threat of loss of their jobs if they attract insufficient numbers of big cases. Shielded from appellate review,[187] the competing courts have adopted dozens of policies and practices that violate the Bankruptcy Code and Rules.[188]

False venue claims are another violation, but they are more than that. If made with knowledge of their falsity, they constitute perjury. Perjury goes directly to the integrity of the legal process. Perjured claims of venue, if made, cannot be sloughed off as waived by failure to object or irrelevant because the impaired creditors accepted the plan.[189] They constitute a new low in chapter 11's descent into lawlessness.

The solution to the false-venue-claim problem is to end the bankruptcy court competition for big cases. An important first step would be for the National Conference of Bankruptcy Judges to acknowledge that the competition exists.

The bankruptcy venue legislation currently before Congress would end the competition. That legislation may be adopted once President Biden leaves office. Adoption

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[187] *Supra* notes 56-57 and accompanying text.

[188] LoPucki, *supra* note 1.

[189] *E.g.*, Robert K. Rasmussen & Roye Zur, *The Beauty of Belk*, 97 AM. BANKR. L.J. 438 (2023) ("Absent an objection, there is little reason for the bankruptcy judge to intervene.").

would end the deepening level of lawlessness in, and increasing disrespect for, the United States Bankruptcy Courts.