The Legal Intelligencer
THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2013
PHILADELPHIA, FRIDAY, JANUARY 4, 2013 VOL 247 • NO. 3 An ALM Publication

Patriot Coal Bankruptcy Cases Transferred to St. Louis

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Special to the Legal

Venue is among the more controversial and politicized aspects of bankruptcy law. While the country watches with unease the debate in Washington unfold regarding the fiscal cliff, bankruptcy practitioners continue to debate their own political issue — bankruptcy venue. The decision regarding where a lawsuit is filed and adjudicated is an important decision. Like other federal litigation, the proper venue for the filing of a bankruptcy case is governed by federal statute. Over the years, New York and Delaware have emerged as favored venues for the filing of Chapter 11 cases for a number of reasons, especially large and complex cases. When a voluntary bankruptcy filing is involved, the company, like the plaintiff in civil litigation, has the right in the first instance to choose the venue, subject to venue being proper under the statute. However, interested parties can — and often do — challenge the debtor's choice of venue in bankruptcy cases. A recent 54-page decision by U.S. Bankruptcy Judge Shelley C. Chapman of the Southern District of New York in *In re Patriot Coal* granted such a request to transfer the Chapter 11 cases of Patriot Coal Corp. and its subsidiaries to the Eastern District of Missouri. The decision, like others in recent years, shows that courts will determine appropriate venue under the current bankruptcy venue statute to satisfy the interest of justice, including the concerns of creditors and other stakeholders. This opinion attracted our attention in part because of the question presented by Chapman at the outset of the opinion: "The broader question before the court, however, is dauntingly complex — what is justice?" That fundamental question being presented, we now will discuss the opinion.

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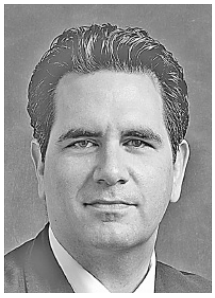

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DEBTORS' TENUOUS CONNECTION WITH THE SOUTHERN DISTRICT

Patriot Coal and its subsidiaries filed Chapter 11 cases in the U.S. Bankruptcy Court for the Southern District of New York on July 9, 2012. Because two of the affiliates were formed as New York entities, all 99 affiliates filed in the Bankruptcy Court for the Southern District of New York. According to the opinion, Patriot and 98 of its subsidiaries were in the principal business of mining and preparing metallurgical coal and thermal coal in various locations in Appalachia and the Illinois Basin. This large enterprise sold 31.1 million tons of coal in 2011 to customers across North and South America, Europe and Asia.

The debtors' corporate headquarters and executive offices are located in St. Louis, Mo. Only two debtor affiliates were domiciled or

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headquartered in New York. Of the others, 54 debtors were formed in West Virginia, 40 in Missouri and three in Kentucky. The debtors employed 4,000 people and administered benefit plans that covered approximately 11,860 retiree residents of 41 different states. Approximately 88 percent lived in West Virginia and the Illinois Basin coal region.

The opinion painstakingly reviews in detail the location of the debtors' operations, employees, prepetition litigation, headquarters, books and records, and residences of the debtors' retirees. It even reviews the governing law and forum selection clauses in coal supply contracts, bonds, indemnity agreements and credit facilities. The opinion states the debtors formed the two New York affiliates, PCX Enterprises Inc. and Patriot Beaver Dam Holdings LLC, as New York entities shortly before commencing the cases. Neither entity had any business operations, employees or offices in New York. In fact, the debtors stipulated that both New York entities were formed to permit bankruptcy venue in New York, and for no other purpose. That being said, the court found the debtors determined in good faith that filing in New York was in the best interest of the debtors, creditors and other stakeholders, because, among other things, the debtors' advisers and significant financial institutions involved in the DIP financing were based in New York and the DIP financing contemplated the debtors' cases would be venued in the Southern District of New York.

MOTIONS ARE FILED REQUESTING TRANSFER OF VENUE

The United Mine Workers of America (UMWA), which represents approximately 42 percent of the debtors' active employees and 10,388 of the debtors' 11,860 retirees, filed motions to transfer the 99 cases to the Southern District of West Virginia. Two utilities joined the UMWA motion. Three of the debtors' sureties also filed motions requesting the cases be transferred. Finally, the Office of the U.S. Trustee filed a motion seeking transfer "to a district where venue is proper."

The court also received approximately 386 letters from UMWA retiree members urging transfer. One of the co-authors received each letter by email. The court wrote that it reviewed each and every letter and the opinion notes, "Indeed, without the dedication and sacrifice of the coal miners and their families, there would be no coal, and there would be no Patriot Coal."

The debtors objected, and were joined by 35 unsecured creditors, the official unsecured creditors' committee appointed in the cases, as well as Citibank N.A., the administrative agent for the DIP lenders.

COURT TRANSFERS CASES TO ST. LOUIS IN INTEREST OF JUSTICE

28 U.S.C. §1408(1) permits a debtor to commence a case in a district where the debtor has resided for 180 days, or less, if the debtor has not resided in another district longer than 180 days. Section 1408(2) permits a debtor to commence a case in a district where a bankruptcy case of an affiliate is pending. These two provisions permit debtors to use the venue selection process used by the debtors in this case. First, make a good-faith determination of the best venue and form an affiliate-entity there. Second, file the entire enterprise, based on the "anchor" affiliates. Here, the debtors formed two New York entities to meet the requirements of 1408(1) and based venue for the other debtors on Section 1408(2) on the two New York affiliates' bankruptcy filings. The motions were filed under 28 U.S.C. §1412, which provides that the court may transfer the venue of a bankruptcy case to another district in the interest of justice or for the convenience of the parties.

According to the opinion, the concept of "venue" can be traced back to medieval England, where jurors' personal knowledge of the facts and parties formed the basis for their decisions. Over time, the modern-day considerations evolved, including convenience of the parties and witnesses, the location of the defendant, and the scope and type of jurisdiction. The opinion notes that the concept of venue remains one of fairness and convenience.

No party disputed that the debtors satisfied Section 1408. The court wrote, "By incorporating PCX and Patriot Beaver Dam in New York in the weeks prior to the petition date, the debtors achieved literal and technical compliance with the venue statute and used these entities as a basis for filing all of the Patriot Chapter 11 cases in New York." The court accepted that the debtors chose New York

in good faith because of their belief that most of the domestic and international creditors would have been inconvenienced and costs and efficiency of administration would have been materially greater if they filed elsewhere. Notwithstanding the debtors' literal compliance and the absence of bad faith, the court concluded the tactic of creating an eve-of-filing entity to create venue could not be ignored and had to be considered as part of the "interest of justice" analysis provided by Section 1412.

The court compared the debtors' actions to other areas of the law where technical compliance is achieved, but the statute's intent is frustrated. The opinion quotes a tax law opinion by Judge Learned Hand where the court rejected an "elaborate scheme" to avoid income tax liabilities that nevertheless complied with the tax code's language. Hand wrote, "As the articulation of the statute increases, the room for interpretation must contract; but the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create."

Chapman concluded that notwithstanding the debtors' literal compliance with Section 1408 and "overwhelming support" from stakeholders, as well as evidence that efficiency would favor New York, the debtors' choice of venue could not stand, "as to do so would elevate form over substance in a way that would be an affront to the purpose of the bankruptcy venue statute and the integrity of the bankruptcy system." The court noted that in these cases, "the facts were created to fit the statute," which is distinguishable from "applying the statute to fit the facts." The court noted that such reasoning would always permit New York to trump other districts, and condone a "bootstrap" venue selection strategy at odds with the purpose of the venue statute and the interest of justice.

All of that being said, the court declined to transfer the cases to the District of West Virginia as sought by the UMWA. Instead, the court transferred the cases to the Eastern District of Missouri. The court reasoned there were no economic advantages to transferring to West Virginia, and rejected the UMWA's argument that transfer from New York, where the bankers and financiers were located, to West Virginia, where the coal is mined and where judges understand and "live near coal miners, grew up with them, worship with them, and break bread with them," would promote justice. The court characterized this argument as the UMWA's attempt to grab for itself a perceived "home field advantage" that they complained would be enjoyed by the banks in New York. The transfer of the cases to a district where the UMWA members believed they would enjoy sympathetic judges is, according to the court, "forum-shopping that is just as inappropriate as the forum selection strategy employed by the debtors, if not worse."

The opinion observed the debtors' corporate offices, headquarters, books and records were located in St. Louis, several members of the debtors' executive management team live and work in and around St. Louis, and many of the debtors' operations are located in the nearby Illinois Basin. The court reasoned it was important to consider the UMWA members' desire to attend and observe hearings, the outcome of which will fundamentally affect their lives. The opinion observed St. Louis is also a major transportation hub.

The *Patriot Coal* decision, like many before it, demonstrates that courts ensure the venue statute has, and continues, to work well to balance the interests involved in the choice of venue of bankruptcy cases. Courts have consistently provided deference to the debtors' choice of venue that would promote the interests of the various stakeholders in Chapter 11 cases and efficiency for the administration of cases that often involve myriad domestic and international stakeholders. At the same time, when venue is created technically within compliance but does not serve the interests of justice or true convenience of the parties, courts do not hesitate to transfer even large and complex Chapter 11 cases to other districts. With all of the issues pending in Washington, D.C., where political maneuvering is inhibiting the fixing of real problems, it is comforting that at least one statutory framework is working as intended. •