

NATIONAL BANKRUPTCY CONFERENCE
*A Voluntary Organization Composed of Persons Interested in the
Improvement of the Bankruptcy Code and Its Administration*

July 8, 2005

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Hon. John Conyers, Jr.
Ranking Member, Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Re: H.R. 420

Dear Rep. Sensenbrenner and Rep. Conyers:

The National Bankruptcy Conference ("NBC") writes to alert you to a potentially unintended consequence of Section 4 of H.R. 420, which, if enacted, could conflict with the way that personal injury tort claims are currently required to be treated in bankruptcy. As you know, the NBC is a voluntary organization composed of persons interested in the improvement of the Bankruptcy Code and its administration. A brief description of the NBC is attached.

Section 4 of H.R. 420, which appears intended to address normal non-bankruptcy personal injury civil actions, would require any personal injury claim filed in federal court *to be filed and tried in the federal court where the plaintiff currently resides or resided at the time of the injury, where the injury occurred, where the defendant resides or where the corporate defendant's principal place of business is located*. Section 4 does not, however, indicate that it is inapplicable to personal injury claims filed against a debtor in a bankruptcy case. Consequently, perhaps unwittingly, passage of Section 4 in its current form would create a conflict with long-standing rules in bankruptcy cases as to where proofs of claims are to be filed and where personal injury tort and wrongful death claims are tried.

Under the existing provisions of the Bankruptcy Code and the Bankruptcy Rules, personal injury tort and wrongful death claims are required to be filed in the bankruptcy case like any other claims against the debtor. Such claims are filed with the clerk's office in the bankruptcy court where the case is pending. *See Bankruptcy Rule 5005*. Under 28 U.S.C. § 157(b)(5), a claimant who holds a personal injury tort or wrongful death claim against the debtor is required to try its claim, if a trial is demanded, "in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending."

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Personal injury claims against a company or an individual undergoing either reorganization or liquidation under the Bankruptcy Code should be brought, at least as an initial matter, only in the bankruptcy court where the case is pending. Under 28 U.S.C. § 1334(e), that court has exclusive jurisdiction of the assets of the debtor and of the conduct of the case, and under 11 U.S.C. § 362(a), any such actions that arose prepetition are stayed. That court must have the authority to manage the processing of all the claims against the debtor. Bankruptcy cases could not be properly administered if claims against the reorganizing or liquidating company or individual were filed all over the country. Similarly, local bankruptcy courts around the country would be unable to process a flood of proofs of claim filed in their courts relating to bankruptcy cases pending elsewhere.

Moreover, as noted above, after a bankruptcy case is commenced, 28 U.S.C. §157(b)(5) requires the District Court in the district where the bankruptcy case is pending to determine where personal injury tort and wrongful death claims against the debtor are to be tried. It is important that such claims continue to be filed with the bankruptcy court where the bankruptcy case is pending so the District Court in such district can exercise its supervisory authority over such claims.


For the foregoing reasons, the NBC opposes passage of H.R. 420 in its current form. We believe language can easily be added to Section 4 to make it clear that the Section is not intended to disturb practice in bankruptcy cases. In order to do so, an additional exclusion from the applicability of Section 4 could be added to the definition provisions of Section 4(c)(1). Specifically, a paragraph (C) should be added to subsection (c)(1) to read as follows:

“[T]he term 'personal injury claim'...(C) does not include a claim against a debtor in a case pending under title 11 of the United States Code that is a personal injury tort or wrongful death claim within the meaning of 28 U.S.C. § 157 (b)(5).”

We understand that H.R. 420 was reported by the House Committee on the Judiciary last month. However, we hope that you will take action to amend the bill on the floor so that it does not have the apparently unintended consequence of changing long-standing bankruptcy practice with respect to personal injury tort and wrongful death claims against title 11 debtors.

If you have any questions or if we can be of further assistance, please contact me.

Sincerely,


Donald S. Bernstein, Chair
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