

## Considerations when Choosing and Determining Venue

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## Venue Generally

- 28 U.S.C. § 1408 and 1410
  - § 1408:
    - Except as provided in section 1410, a debtor may file its bankruptcy case in any district where (1) the debtor's domicile, residence, principal place of business, or principal assets are located; or (2) an affiliate, general partner, or partnership of the debtor has a case pending.
  - § 1410:
    - Cases under chapter 15 may commence in the district (1) which the debtor has its principal place of business; (2) if the debtor does not have a place of business or assets in the United States, in which there is an action pending against the debtor; (3) in cases other than (1) & (2), "venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representatives."

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## Venue Generally (cont.)

- Bankruptcy Rule 1014
  - (a) Details the procedures for obtaining transfer, allowing for transfer upon request by a party in interest or court's own motion.
  - (b) governs venue when petitions involving the same debtor are filed in different courts.
    - Ex. *In re Caesars Entertainment Operating Company Inc.*, No. 15-10047(KG) (Bankr. D. Del. Feb. 2, 2015)
- SDTX Bankr. Local Rule 1014-1
- *In re ERG Intermediate Holdings, et al.*, 2015 Bankr. LEXIS 3639 (Bankr. N.D. Tex. Oct. 15, 2015) (state-wide venue).
  - *In re Scotia Dev., LLC*, No. 07-20027, 2007 Bankr. LEXIS 5099 (Bankr. S.D. Tex. Apr. 20, 2007) (district-wide venue)

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## Is Delaware Always Preferred?

- *In re Caesars Entertainment Operating Company, Inc.*, Case No. 15-10047
  - Involuntary filed in Delaware
  - 3 Days Later, Caesars Entertainment Operating Company, Inc. filed in the N.D. of Illinois.

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## Forum Shopping

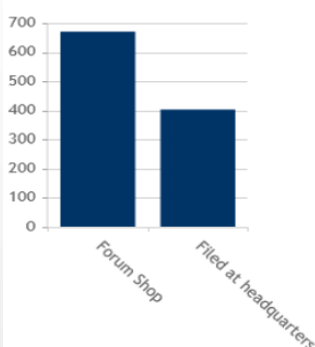
- *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004), *cert. denied*, 125 S. Ct. 495 (2004).
  - Bankruptcy court allowed debtor to pay 2,330 “critical vendors”, totaling approximate \$300 million.
  - District Court reversed, holding neither section 105(a) nor the doctrine of necessity authorizes such order.
  - 7th Circuit Affirmed.

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## Forum Shopping (Cont.)

From [http://lopucki.law.ucla.edu/design\\_a\\_study.asp](http://lopucki.law.ucla.edu/design_a_study.asp).

Number of cases



Forum shopped	Frequency	Percentage
Forum Shop	669	62.5%
Filed at headquarters	402	37.5%
Total	1,071	

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