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Legislative  
History

I. BANKRUPTCY DIVISION OF THE UNITED STATES DISTRICT COURTS

A. Background

Title I of the bill establishes a bankruptcy division of each of the United States district courts to adjudicate bankruptcy cases and civil proceedings arising in or relating to bankruptcy cases. The proposed bankruptcy division would resolve the constitutional crisis now facing the bankruptcy court system as a result of the United States Supreme Court decision in the case of Northern Pipeline Construction Company v. Marathon Pipe Line Company, \_\_\_\_ U.S. \_\_\_\_, 102 S. Ct. 2858 (1982). The Supreme Court held in Northern Pipeline that the grant of jurisdiction to the bankruptcy courts in section 241(a) of the Bankruptcy Reform Act of 1978 was unconstitutional because the bankruptcy judges are not afforded the protections provided by Article III of the Constitution.

The Court stayed its order invalidating the jurisdictional grant to the bankruptcy courts until October 4, 1982, in order to give Congress time to establish a constitutional judicial system for the adjudication of bankruptcy matters. On October 4, 1982, the existing bankruptcy courts will no longer have any statutory jurisdiction over bankruptcy matters and will cease functioning. Absent Congressional action to provide a constitutional forum for bankruptcy matters, there is some doubt that such matters can be adjudicated at all. There are presently pending in excess of 500,000 bankruptcy cases which involve billions of dollars in assets and creditors' claims. Failure of the Congress to act in a timely fashion would, at the very least,

result in a chaotic and highly uncertain situation for debtors and creditors alike, as well as considerable delay in the adjudication of bankruptcy matters.

B. The Need For An Article III Tribunal

The reasoning expressed by the plurality and concurring opinions in Northern Pipeline make clear the practical need for an Article III tribunal to resolve the constitutional problems inherent in the current bankruptcy court system. The plurality found that the constitutional jurisdiction of an Article I court must be limited to the adjudication of "public rights." The Court does not define with precision what constitutes "public rights" but notes generally that they must at a minimum arise "between the government and others." (102 S. Ct. at 2870). By contrast, private rights, which must be adjudicated by Article III courts, are those involving "the liability of one individual to another." (102 S. Ct. at 2870-71). The concurring opinion authored by Justice Rehnquist would have decided the case on narrower grounds, holding that traditional common law claims arising under state law must be decided by Article III judges.

Under either rationale, there is no practical way to construct an effective Article I bankruptcy court which will not be subject to serious and continuing constitutional challenge. There is no reason to assume that even the majority of cases arising under Title 11 involve solely public rights which could be constitutionally litigated by an Article I court under the rationale advanced by the plurality. For example, the

adjudication of a proof of claim generally involves claims by one private party against another which, by their nature, seem clearly matters of "private right." A strong argument may be made that a creditor's claim does not cease to be a private claim merely because the defendant is bankrupt.

Even under the more narrow holding offered by Justice Rehnquist's opinion, it is clear that an Article I bankruptcy court would be subjected to continual and very serious constitutional challenge. Cases arising under Title 11 frequently entail consideration of state law or traditional common law issues in many different contexts. To take the most obvious example once again, proofs of claim offered by a claimant against the bankrupt will generally be predicated on the state laws (of contract, agency, property, etc.).

Finally, even if constitutional jurisdiction over certain aspects of Title 11 proceedings could be defined, any system under which such matters are relegated to Article I courts while other matters involving private rights are referred to Article III courts would result in an inefficient bifurcation of the proceedings. One of the primary purposes of the 1978 Bankruptcy Reform Act was to provide a single forum in which all claims necessary to the expeditious resolution of a bankruptcy proceeding could be consolidated. After the Northern Pipeline decision, it is clear that this can only be achieved through an Article III court.

C. Creation of a Bankruptcy Division of  
the United States District Courts

While an Article III solution is dictated to the problems presented by Northern Pipeline, it is clear that the existing district courts could not effectively manage the enormous volume of bankruptcy filings currently handled by the bankruptcy courts. In 1981, 506,829 bankruptcy petitions were filed. This would almost quadruple the civil caseload now handled by the district courts (there are slightly over 180,000 civil cases filed annually). The district courts are in many cases already experiencing substantial case backlogs and will be unable to handle the added burden of bankruptcy cases without considerable delay and disruption in these bankruptcy cases as well as the rest of the civil case calendar. Moreover, concern has often been expressed in the past that district judges who supervise general litigation would not have sufficient expertise in bankruptcy matters to expeditiously handle complex bankruptcy problems.

To avoid the evident problems with the assignment of bankruptcy cases to the existing district courts, H.R. 6978, currently pending before the House of Representatives, would create a new trial court under Article III to handle solely bankruptcy cases and proceedings. This approach, however, creates some difficulties of its own. At present, there is only one federal trial court constituted under Article III, the district courts.

H.R. 6978 would create a second, parallel system of trial courts for bankruptcy, which would inevitably result in some duplication and overlap. There would, for example, be two sets of clerks in each district, one for the district court and one for the bankruptcy court. There would also be problems that result from the inflexible assignment of specific numbers of judges to the district court and the bankruptcy court, regardless of the changes in the relative number of bankruptcy cases on one hand and civil and criminal cases on the other. Although some of these problems could be resolved through such mechanisms as the transfer of improperly filed cases between the district and bankruptcy courts and the temporary designation of judges of one court to sit as judges of the other, the establishment of an independent, parallel court structure would always present the likelihood of friction and inefficiency.

This bill adopts a somewhat different solution to the problem. The goal is on the one hand to avoid the creation of a separate court structure, yet on the other to achieve the benefits of a more specialized judiciary that can concentrate on bankruptcy matters. The solution is to vest bankruptcy jurisdiction in the district courts, but to expand their size and to assign additional district judges specifically to bankruptcy matters. This scheme will promote bankruptcy expertise among the judges assigned to the bankruptcy division of the district court, and will serve to keep bankruptcy matters separate from the backlog of civil and criminal cases pending before the other district

judges. 1/ In this way, the litigation of bankruptcy matters can be integrated efficiently into the workload of the district court, while at the same time assuring that bankruptcy cases will be handled promptly and knowledgeably by Article III district judges who specialize in bankruptcy law.

The district judges who are assigned to the bankruptcy division will be United States district judges for all purposes under title 28 of the United States Code. Thus, unless specifically provided to the contrary, such judges would be governed by the existing provisions of law, such as those relating to retirement, law clerks and seniority. The district judges assigned to the bankruptcy division would, however, deal primarily with cases under title 11 and civil proceedings arising under or related to cases under title 11.

D. Assignments of District Judges in the Bankruptcy Division

The bill provides for the appointment of 227 additional district judges to serve in the bankruptcy division, 2/ and directs that all bankruptcy matters before the district court be assigned to that division. This assures that bankruptcy matters will come before judges who have experience in the field, and that there

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1/ The assignment of district judges and bankruptcy cases specifically to the bankruptcy division will assure that cases pending in that division will not be affected by the Speedy Trial Act or other laws creating priorities for certain types of civil or criminal cases.

2/ The bill provides the same number of judges, distributed in the same districts, as provided by H.R. 6978.

will be district judges specifically assigned to hear such matters. The bill also allows other district or circuit judges to be assigned temporarily to perform the duties of a district judge in the bankruptcy division.

Further, district judges in the bankruptcy division can be assigned to hear non-bankruptcy matters pending before other divisions of the district court, and to sit by designation on other district courts and the courts of appeals on the same basis as other district judges. However, the bill would allow such designation or assignment only to the extent that it would not interfere with the expeditious determination of cases and proceedings pending in the bankruptcy division. This provision will assure that bankruptcy matters will not be unduly delayed because of the assignment of district judges to hear other types of cases, whether civil or criminal.

E. Other Provisions

Jurisdiction and venue over bankruptcy matters would be the same for the bankruptcy division of the district courts under this bill as was intended for the bankruptcy courts under the Bankruptcy Reform Act of 1978 after the effective date of April 1, 1984.

An appeal from a final order or judgment of the bankruptcy division of a district court would, as with any final order or judgment of the district court, be taken to the court of appeals for the circuit. However, as provided in the 1978 Act, the judicial council of a circuit, at its option, could establish,



for any district, bankruptcy appellate panels composed of three district judges assigned to bankruptcy divisions of districts within the circuit. In any district where such bankruptcy appellate panels are established, an appeal from a bankruptcy division judgment would be taken to the panel, and then from the decision of the panel to the court of appeals, unless the parties agreed to appeal directly to the court of appeals.

The bankruptcy judges who are serving on the date of enactment of the legislation would constitute the bankruptcy courts for the period beginning on the date of enactment and ending on September 30, 1983 (referred to as the "transition period"). The terms of office of all such transitional bankruptcy judges who are serving on the date of enactment of the Act would expire on September 30, 1983. During the transition period such judges would be authorized to exercise jurisdiction over all cases under title 11 of the United States Code and all proceedings arising under title 11 of the United States Code or arising in or related to a case under title 11 of the United States Code. Such judges would be continued at their present salary level.

## SECTION-BY-SECTION ANALYSIS

Section 2 adds a new section 132A to title 28 of the United States Code, providing for the establishment of a bankruptcy division in each United States District Court. The bankruptcy division shall consist of the active district judges designated and assigned to the division, but other judges may be assigned to sit as judges of the division. The bankruptcy division is not a separate court but an integral part of the district court in each district, and except as otherwise provided, the district judges assigned to the bankruptcy division shall have the same powers and duties of any district judge.

In order to conform the terminology of title 11 and other provisions of law to the district court bankruptcy division system created by the bill, this section (which becomes effective October 1, 1983) also provides that any reference to a bankruptcy court shall be deemed to be a reference to the bankruptcy division of a district court.

Section 3 provides for the appointment by the President, by and with the advice and consent of the Senate, of additional district judges to be assigned to the bankruptcy division of the district courts. The number and allocation of additional judgeships in each judicial district is identical to that provided in H.R. 6978, except that the judges are appointed as additional district judges rather than as bankruptcy judges.

Section 4 amends section 137 of title 28, United States Code, which governs the division of business among the district

judges of a district. All bankruptcy cases and civil proceedings arising under or related to cases under title 11 of the United States Code are assigned to the bankruptcy division of the district court. As provided in this section and in section 132A(b) of title 28, United States Code (added by section 2 of this Act), other district judges may be assigned under the district court's rules to hear cases pending in the bankruptcy division if needed. Also, the district judges in the bankruptcy division may be assigned to hear other cases pending in the district court, but only if the assignment will not impair the expeditious determination of cases and proceedings pending in the bankruptcy division. These provisions allow some flexibility in the assignment of the workload of the district, while assuring that the resolution of bankruptcy questions will not be hindered as a result of the assignment of the district judges in the bankruptcy division to hear other cases.

Section 5 amends section 139 of title 28 to provide special rules for the prompt and convenient consideration of bankruptcy cases and proceedings by the bankruptcy division of the district court.

Section 6 amends chapter 5 of title 28 by adding a new section 145, which authorizes the creation and appointment of bankruptcy appellate panels in a district, at the option of the judicial council of the circuit. This provision reenacts the provision of Public Law 95-598, which authorized the use of bankruptcy appellate panels. Appeals are heard by a three-member panel composed of district judges in the bankruptcy divisions of

the districts within the circuit, or such other judges as may be designated and assigned under chapter 13 of title 28.

Section 7 amends section 295 of title 28 of the United States Code to preclude the designation and assignment of district judges in the bankruptcy division to sit on other courts if such designation and assignment will impair the expeditious determination of cases pending in the bankruptcy division.

Section 8 amends section 296 of title 28 of the United States Code to make clear that circuit and district judges may be designated and assigned under chapter 13 of title 28 to carry out the duties of a district judge in the bankruptcy division. The duties of a district judge in the bankruptcy division would include, where appropriate, service on a bankruptcy appellate panel constituted under section 145 of title 28.

Section 9 amends the table of sections of chapter 17 of title 28, United States Code, by striking out the item relating to section 375.

Section 10 amends section 376 of title 28 to provide that qualifying present bankruptcy judges who serve as long as they are needed during the transition period may participate in the judicial survivor's annuities system.

Section 11 adds a new section 377 to title 28 to provide improved retirement benefits for qualifying present bankruptcy judges who remain on the bankruptcy court for the complete transition period. Under this section, a former bankruptcy judge, who is not appointed to the district court after September 30, 1983, would be eligible to receive improved retirement benefits

after attaining the age of 60 years old, if such judge continues in service until September 30, 1983; had served as a bankruptcy judge for at least ten years; and advises the President in writing of his willingness to accept appointment to the bankruptcy division.

The retirement provisions contained in proposed section 377 constitute an equitable retirement scheme for judges who have performed under an increasingly burdensome workload. Moreover, it is important that there be a smooth and orderly transition to the Article III bankruptcy court. That can only occur, especially under the present workload, if experienced judges remain on the bench during the transition period. Proposed Section 377 provides an incentive for the present bankruptcy judges to remain during the transition period. A qualifying present bankruptcy judge who does so would receive an annuity calculated in conformity with the provisions governing the annuity of Members of Congress in 5 U.S.C. 8339(c).

Section 12 is a technical amendment to correct errors in designation of paragraphs in 28 U.S.C. 604(a) and an erroneous cross-reference in 28 U.S.C 602(b).

Section 13 makes a conforming amendment to 28 U.S.C. 620(b)(3) by deleting a reference to referees.

Section 14 amends 28 U.S.C. 621(a)(2) to provide that four district judges, one of whom is assigned to the bankruptcy division, shall serve on the Board of the Federal Judicial Center.

Section 15 makes a conforming amendment in 28 U.S.C. 631(c) by deleting a reference to referees in bankruptcy.

Section 16 makes a conforming change in 28 U.S.C. 634(a) by deleting a reference to referees in bankruptcy.

Section 17 makes a conforming change to authorize the clerk of a district court to employ deputies, clerical assistants and employees assigned to the bankruptcy division.

Section 18 adds a new section 1293 of title 28 to provide that the courts of appeals shall have jurisdiction of appeals from all final decisions of the bankruptcy appellate panels established in section 145 of title 28. A court of appeals shall have jurisdiction over an appeal from a final judgment, order, or decree of a bankruptcy appellate panel or, notwithstanding section 1480 of title 28, from a final judgment, order, or decree of the bankruptcy division of a district court of the United States if the parties to such appeal agree to a direct appeal to the court of appeals.

Section 19 amends 28 U.S.C. 1294 to provide that an appeal from a bankruptcy appellate panel lies to the court of appeals for the circuit in which the bankruptcy appellate panel is located.

Section 20 makes certain technical amendments correcting errors in designation, cross-reference, and spelling.

Section 21 repeals 28 U.S.C. 1334, relating to district court jurisdiction of bankruptcy cases.

Section 22 makes a technical amendment to 28 U.S.C. 1360(a) relating to the status of Alaska as a territory.

Section 23 adds a new chapter 90 to title 28 entitled "District Courts; Bankruptcy," governing jurisdiction and procedure for bankruptcy matters. Rules of jurisdiction, removal, and venue for the district courts are the same as was intended for the bankruptcy courts under the Bankruptcy Reform Act of 1978 after the effective date of April 1, 1984.

Section 24 makes a conforming change to 28 U.S.C. 1827(i) by deleting a reference to referee in bankruptcy.

Section 25 amends 28 U.S.C. 1963 to make applicable to discharges and confirmation orders the registration provisions applicable to district court judgments.

Section 26 makes a conforming change to 28 U.S.C. 2107 relating to time for appeals to courts of appeals. This section only places an outside limitation on the time for appeals.

Section 27 adds a new section 2256 to title 28 relating to habeas corpus in bankruptcy matters.

Section 28 makes conforming and technical amendments to 5 U.S.C. 8331, 8339, 8341, and 8344 relating to certain civil service retirement provisions.

Section 29 makes a conforming amendment to section 402(b) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 4682) relating to certain effective dates.

Section 30 makes a conforming change to Section 406(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2686) relating to certain studies and surveys required to be made by the Director of the Administrative Office of the United States Courts.

Section 31 makes conforming amendments by repealing sections 404, 405(a), 405(b), 405(c), 409, and 410 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2683).

Section 32 provides that the offices of bankruptcy judges for which appointments are authorized, by laws in effect immediately preceding the date of the enactment of this Act, to be made in a judicial district shall constitute the bankruptcy court of such judicial district during the period beginning on the date of the enactment of this Act and ending on September 30, 1983 (referred to as the "transition period").

The bankruptcy courts established in this section shall be deemed to be the bankruptcy courts for purposes of this Act; the Acts amended by this Act; title 28 of the United States Code, as amended by this Act, other than sections 133A, 293(b), 294, 295, 331, 372, and 451 of such title; title 11 of the United States Code; and the Acts amended by the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549).

During the transition period and in addition to cases and proceedings commenced during such period, all cases under title 11 of the United States Code and all proceedings arising under title 11 of the United States Code or arising in or related to a case under title 11 of the United States Code pending on the date of enactment of this Act shall be heard by the bankruptcy courts established in subsection (a) of this section as though such cases and proceedings had been commenced in such courts.

Section 33 provides that the judges of the bankruptcy courts established in section 32(a) of this Act shall have the



title United States bankruptcy judges. (During the transition period, United States bankruptcy judges may exercise the jurisdiction and powers conferred by title 28 and title 11 of the United States Code on the bankruptcy division of the district courts.)

Notwithstanding section 34a of the Bankruptcy Act as in effect on September 30, 1979, and section 404(b) of the Act of November 6, 1978, as in effect before the date of the enactment of this Act, the terms of office of all United States bankruptcy judges who are serving on the date of the enactment of this Act in the bankruptcy courts established in section 32(a) expire on September 30, 1983.

During the transition period and for any subsequent period of service described in section 34(c) of this Act, the levels of salaries of United States bankruptcy judges are continued at the levels in effect on the date of the enactment of this Act, subject to adjustment under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) and section 461 of title 28, United States Code.

An appeal from a judgment, order, or decree of a United States bankruptcy judge during the transition period shall be:

(a) if the judicial council of the circuit in which the bankruptcy judge sits so orders for the district in which the bankruptcy judge sits, to a panel of three bankruptcy judges appointed in the manner described in section 145 of title 28, United States Code, as added by this Act,

(b) if no panel is appointed under subparagraph (A) for the district in which such bankruptcy judge sits, to the district court for such district, or

(c) if the parties to the appeal agree to a direct appeal to the court of appeals for such circuit, to such court of appeals.

During the transition period the district courts of the United States will have jurisdiction to hear appeals from the judgments, orders, and decrees of bankruptcy courts.

Section 34(a) transfers on October 1, 1983 to the appropriate United States district court--

(1) cases, and matters and proceedings in cases, under the Bankruptcy Act that are pending, at the end of September 30, 1983, in the bankruptcy courts established in section 32(a) of this Act, other than cases, and matters and proceedings in cases under--

(A) section 77 of chapter IX of the Bankruptcy Act, or

(B) chapter X of the Bankruptcy Act in which a general reference under section 117 of the Bankruptcy Act is not in effect, and

(2) cases under title 11 of the United States Code, and proceedings arising under title 11 of the United States Code or arising in or related to cases under title 11 of the United States Code, that are pending at the end of September 30, 1983, in the bankruptcy courts established in section 32(a) of this Act.

Section 34(b) transfers on October 1, 1983 to the appropriate bankruptcy appellate panels established in section 145 of title 28, United States Code, appeals from final judgments, orders, and decrees of the bankruptcy courts established in section 32(a) pending at the end of September 30, 1983, in the panels appointed under section 33(e)(1)(A).

Section 34(c) provides that after September 30, 1983, former United States bankruptcy judges whose terms expired on September 30, 1983, may be temporarily designated and appointed to hear and determine cases or proceedings that are pending in the bankruptcy division of the district court. Section 32(b) and section 33(d) of this Act shall apply to such former United States bankruptcy judges when they sit by designation under this subsection. Any such designation and appointment shall terminate 30 days after all appointments under section 133A of title 28, United States Code, to the bankruptcy division of the United States district court involved have first been made or on March 31, 1984, whichever is earlier.

Section 35 authorizes the Supreme Court to issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new system of bankruptcy divisions of the district court created by this Act.

Section 36 provides for the selection of United States judges in the bankruptcy division on the basis of merit. Whenever a vacancy occurs in such a judgeship, the President

shall appoint persons whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

Since the quality of justice in our Nation depends on the quality of our judges, it is important that they be chosen on the basis of their qualifications and proven excellence. The criteria listed in this section are good character, experience, ability, impartiality and a record of commitment to equal justice.

Extensive practice in bankruptcy law, while desirable, is not a required qualification under this provision. However, judicial nominees should possess the legal qualifications to effectively preside over cases which call for a knowledge of substantive law, and both federal and bankruptcy rules of procedure.

The criteria set forth in this provision do not impinge on the constitutional prerogative of the President to select judicial nominees.

Section 37(a) provides that, except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment.

Section 37(b) provides that sections 132A and 145 of title 28, United States Code, as added by this Act, shall take effect on October 1, 1983.