

In The News

Have You Heard About Houston? – A Q&A With Munsch Hardt's John Cornwell

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Texas Lawyer

What's Happening:

Have you seen the latest bankruptcy data from Androvett Research? It's sobering... some 815 Texas corporations filed for bankruptcy in the first half of 2020—more than any other six-month period in history. Houston is the epicenter, where 602 companies sought Chapter 11 protection in the Southern District of Texas—a 234% increase from the previous six months.

There is not only one reason why Houston has been hit so hard, says John D. Cornwell, a shareholder at Munsch Hardt.

“Unquestionably, the Southern District of Texas, which includes Houston, has received an extraordinary number of bankruptcy filings, and the number of 'complex' Chapter 11 filings has been disproportionately high compared to most every other jurisdiction (and neck-and-neck with Delaware),” Cornwell said.

First, the district has implemented the most pragmatic and streamlined local rules and procedures for conducting complex chapter 11 cases, says Cornwell.

“When debtors file here, our courts have provided an unrivaled level of certainty with respect to the presiding court, access to the case managers, expectations with respect to important ‘first-day’ reliefs, and guidelines applicable during the case that will create time and cost efficiencies, he said. “At the risk of sounding like Eddie Haskell, our judges have created (and implemented) a process where a complex Chapter 11 bankruptcy can run smoothly and fairly, and debtors have taken note.”

Secondly, Southern District of Texas bankruptcy practitioners—judges, courtroom personnel, lawyers, financial advisors, and other turnaround specialists—have an undeniable expertise in energy restructuring, he continued.

“O&G cases have, for many years, dominated the Houston bankruptcy practice,” he said. “And it is no secret that the combination of COVID-19 and Saudi/Russian oil pricing war have created dire circumstances for businesses operating in and around energy commodities. Thus it is no surprise that Houston bankruptcy filings have risen and will continue to rise for the foreseeable future.”

Additionally, the prolonged success of the Houston bankruptcy bar has created a comfort level for out-of-state players that often drive where a bankruptcy proceeding is filed, says Cornwell.

“National and international firms have opened (or expanded) Houston offices; traditional lenders and private equity groups are accustomed to our summer heat; and the word has gotten out that Houston is a jurisdiction that can handle mega-bankruptcy filings across all industries,” he said.

What This Means For Your Law Firm:

Bankruptcy attorneys are busy and will continue to be busy for a long while, says Cornwell.

The bankruptcy practice will always be a cyclical specialty, he continued, but the question is, “how long will the current cycle last,” and “what role will Texas bankruptcy practitioners play in the cycle?”

“The likely answer to both questions is positive for Texas professionals,” Cornwell said. “We have become one of very few primary destinations for filing massive bankruptcies for, among others, O&G, retail, service, and manufacturing companies.”

What Your Law Firm Should Be Doing:

Per Cornwell: It depends greatly on the client and her/his/its situation.

“Advice to a potential debtor is very different from advice to a creditor. A secured creditor has very different needs than that of an unsecured creditor. A ‘general unsecured’ creditor faces very different challenges in a bankruptcy compared to a ‘critical vendor,’ a royalty interest holder, and certain trade creditors. The advice of the day is to actively identify bankruptcy issues; assume counter-parties are distressed; consider preferential transfer exposure; beware of the automatic stay’s impact on pending litigation, foreclosures, etc.; and inform clients of sensitivities and/or consult with a bankruptcy practitioner as early as possible. Clients may not be able to avoid participating in a bankruptcy process, especially in these times, but pre-bankruptcy planning can save significant time and money.”

What Questions Should Law Firms Be Asking Their Clients:

Per Cornwell: Ask every question you can think of relating to your company’s economic status.

“You should ask about payment of debts (amounts and timing), categorization of debts (secured, unsecured, priority levels, etc.), options for raising capital and avoiding defaults, costs of running an in-court and out-of-court restructuring process, and anything else that might impact your company’s long- and short-term value, to name a few. Filing bankruptcy is not a solution for every business, but it is a powerful tool that can save a business, preserve jobs, fairly distribute value, provide litigation relief/resolution, and/or facilitate resolutions that otherwise seem impossible.”

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