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How COVID-19 Strengthened Texas As A Bankruptcy Hub

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Law360 (March 10, 2021, 12:05 PM EST) -- The Southern District of Texas saw a surge in commercial bankruptcy filings during 2020, drawing a caseload second only to Delaware's during the coronavirus pandemic, which attorneys attribute to the accessibility, ingenuity and predictability of a pair of Houston judges who have spent years giving the district a high profile.

Houston's bankruptcy court tallied 1,363 Chapter 11 filings in 2020, almost quadrupling the 361 cases filed in the district in 2019, and making it the second-busiest bankruptcy docket behind Delaware, which saw 1,628 filings. Houston far outpaced the third-busiest docket in the country, the Southern District of New York, which reported 692 filings, according to U.S. Courts data.

While the pandemic forced more businesses than normal into bankruptcy last year, Lone Star State attorneys told Law360 there's more to Houston's growing Chapter 11 docket than COVID-19. A two-judge complex case bench known for its nearly round-the-clock availability, willingness to walk counsel through tough situations, openness to creative reorganization plans and proven track record has helped establish the Southern District as a commercial bankruptcy hotspot in recent years.

"The process and the speed and agility of the complex case docket in the Southern District of Texas has caused a total blossoming of the restructuring community here in Texas," Gray Reed & McGraw LLP partner Lydia Webb said.

In 2020, a variety of companies filed for bankruptcy in Houston, which has long had an oil and energy industry-heavy docket. Large restaurant chains based in California, such as California Pizza Kitchen Inc. and Chuck E Cheese's parent company CEC Entertainment Inc., filed for Chapter 11 protection in the Southern District of Texas. Massachusetts-based Friendly's Restaurants LLC and Kansas-based NPC International Inc., the largest Pizza Hut and Wendy's franchisee in the country, also chose Houston.

Even Dallas-based retail giants J.C. Penney Co. Inc. and Neiman Marcus Group Inc. chose to file in Houston rather than on their home turf.

U.S. District Judges David Jones and Marvin Isgur, the two judges in Houston who handle the Southern District's complex Chapter 11 cases, have made it a desirable filing location, in large part by making themselves uniquely available to debtors, attorneys say.

Judge Jones gives his case manager's cellphone number to attorneys, Locke Lord LLP senior counsel Elizabeth Guffy said, and both judges will set hearings whenever attorneys request them. Guffy said this is different from some East Coast bankruptcy judges who have specific days set aside for hearings and aren't willing to deviate.

"The judges in Houston will give you a date when you need it," she said.

For example, Judge Jones held J.C. Penney's first-day hearing on a Saturday in May in the retailer's $5 billion Chapter 11 case. J.C. Penney filed for bankruptcy on Friday, May 15, and had its hearing the morning of May 16, during which Judge Jones expressed concern that its timeline, which had an August date for his approval of a restructuring plan or sale, wasn't fast enough.

Along with rare weekend hearings, Judges Jones and Isgur have shown they're also willing to stay late to resolve issues, said Webb, who's had hearings with the judges that have gone until 9 p.m.

"The flexibility and accessibility to the court makes it stand out," she said.

Those characteristics that draw debtors to Houston date back to March 2016, when the Southern District of Texas changed its approach to complex cases and ordered all of them to be heard by Judge Jones or Judge Isgur, both of whom are highly regarded by practitioners and had experience in private practice before their appointments to the federal bench.

Guffy said that efforts to develop complex case rules and guidelines in Houston started in the 1990s, and the 2016 switch steering complex cases to those two judges put the district in the spotlight.

The predictability that came with the switch drew the attention of firms who deal with New York-based lenders and investors, attorneys say.

"That was the start of a renaissance, and it's built from there," Guffy said.

Guffy added that Houston's lack of restrictions over who can practice in the district also help draw companies who might have otherwise filed somewhere else. The Houston judges, she said, aren't "protectionists," and they allow out-of-state firms to file cases without hiring local counsel.

The use of videoconferencing during the pandemic has made it even easier for out-of-state attorneys to run a Texas bankruptcy case remotely. And Judges Jones and Isgur have suggested they might continue video hearings after the pandemic to allow counsel to appear virtually, attorneys say.

"If you can run a case from New York and only come down here when you have to, then that makes it even easier to use New York counsel" who lenders and investors are accustomed to and trust, Guffy said.

It also reduces the costs associated with the case, said Kevin Lippman, Munsch Hardt Kopf & Harr PC's bankruptcy, restructuring and insolvency practice leader.

Judges Jones and Isgur also brought a sense of creativity they used as practicing attorneys to the bench, making them open to approving unique reorganization plans and able to work with attorneys to create solutions.

"They were great practitioners, and that translates into them being great jurists," Webb said.

Attorneys expect 2021 to produce at least as many commercial bankruptcy filings as 2020.

Lippman said he expects companies that received business loans under the Coronavirus Aid, Relief, and Economic Securities Act to tide them over in 2020 will soon run out of money, creating a new wave of filings. He also expects real estate bankruptcies this year as renters default on their leases and are evicted.

"I expect to see an uptick in filings either late second quarter and third quarter of this year," he said, adding that the winter storm that hit Texas on Valentine's Day and left millions without power for days will also increase the number of bankruptcy filings.

Haynes and Boone LLP partner Kelli Norfleet added that many of the companies who filed for bankruptcy in 2020 did so to get ahead of the curve, which will put the companies that are forced into bankruptcy this year in a tough spot.

There were several prepackaged bankruptcy filings in 2020, but Norfleet said she expects that will be less likely this year as assets dry up and shareholders fight to get their money back.

"It will be tougher in 2021, particularly as stakeholders who have lost a lot of value in 2020 are less willing to lose more in 2021," she said.

Read the full article here.

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