

## Bankruptcy haven

*Corporations find Richmond a welcome venue for debt relief*



BY: PETER VIE

Good judges, good lawyers and a well-oiled legal system are proving to be an attractive combination at the U.S. Bankruptcy Court in Richmond.

Struggling corporations seeking sanctuary from creditors are coming to Richmond in greater numbers these days, passing by busier courts to the north, bankruptcy lawyers say. Lawyers say big business preference for a Virginia filing is proving a “real big bonus” for the area’s bankruptcy bar.

Highlighting the trend is the April decision by national retailer Gymboree – headquartered in San Francisco – to file for bankruptcy in Richmond.

### Judges, lawyers credited

“I do think there is a definite trend. I think it is a testament to the quality of the judges,” said Michael A. Condyles, who has been riding the wave of large corporation bankruptcies filed in the Richmond division of the Eastern District Bankruptcy Court.

Condyles and other lawyers from the Kutak Rock firm in Richmond are local counsel for Gymboree. The firm also has represented energy companies Penn Virginia Corp. and Patriot Coal Corporation in their Richmond bankruptcies.

The Richmond bankruptcy court – and the Kutak firm – are said to be favored by national bankruptcy counsel Kirkland & Ellis of Chicago.

The attraction is the “quality and sophistication” of the judges, Condyles said. Five other Richmond bankruptcy lawyers contacted by VLW largely agreed.

Judges Kevin R. Huennekens and Keith L. Phillips, who serve in Richmond, have a combined 15 years of experience on the bankruptcy bench. Huennekens, appointed in 2006, was a veteran of large corporation Chapter 11 cases in private practice.

Phillips, appointed in 2013, had a wide-ranging bankruptcy practice before his selection by the 4th U.S. Circuit Court of Appeals. Each judge is serving a 14-year term.

Besides Gymboree, Patriot Coal and Penn Virginia, Huennekens and Phillips have presided over bankruptcies of the James River Coal Company, Alpha Natural Resources and AMF Bowling Worldwide Inc. All are complex Chapter 11 cases involving companies with national footprints. Companies now plan ahead, one lawyer said, by locating subsidiaries in the area with Richmond-based registered agents to establish a jurisdictional presence.

Richmond’s own Health Diagnostics Laboratory Inc., the fast-growing medical firm that encountered devastating regulatory troubles, had options about where to seek bankruptcy protection. HDL chose its home town as well.

### Predictability and efficiency

When national companies pick Richmond to work out their financial problems, they are intentionally rejecting the busiest courts for large corporation bankruptcies, including those in the Southern District of New York and in Delaware.

Each has numerous judges on the bankruptcy bench.

Some of those judges “you just would not want,” said one lawyer, who asked not to be named.

Several attorneys mentioned the consistency offered by Huennekens and Phillips, including William A. Gray of Sands Anderson.

He said lawyers can look at prior rulings by Huennekens and Phillips and know what to expect on first day motions and other rulings.

“The wheel’s already been created by prior filings,” Gray said.

Others agree.

“A key to filing a large corporation is to have predictability as to how the court will handle decisions,” Condyles said.

Lawyers also commented on the speed of the rulings from Huennekens and Phillips. One said he received orders on various court rulings the day after a hearing. Michael T. Freeman, chair of the bankruptcy section of the Richmond Bar Association, said outside bankruptcy counsel finds the resources they need in Richmond. “We have an extremely capable judiciary, the attorneys in the area are composed of a good mix of large, medium and small-sized law firms with a wide range of experience, and matters are handled in an efficient and expeditious manner,” Freeman said.

### High fees don’t alarm

The Richmond judges are said to be comfortable with the complexities of large corporation bankruptcies, and also with

the large attorney fees submitted for approval.

One Richmond bankruptcy lawyer said Huennekens and Phillips generally will approve fee applications for well over \$1,000 per hour unless someone objects. Senior bankruptcy lawyers at large national firms are said to bill more than \$1,200.

The U.S. Trustee’s office also understands big firm billing rates, the lawyer added.

Some other Virginia judges would have a “heart attack” if asked to approve fees that large, the lawyer quipped.

### Good for business

If Richmond is becoming a magnet for large corporate workouts, it is a welcome trend for the Richmond bankruptcy bar. “We appreciate it when the bigger ones come to town,” said Gray. “We think national firms look favorably on the local bar here,” he added.

While outside counsel from New York or Chicago may take the lead in proceedings, “it’s also important to have a sophisticated local bar to help with the filings,” Condyles said.

There are other attractions for corporations looking for debt shelter.

The clerk’s office is “very professional and competent and accommodating. That, I think, is a bit of a draw as well,” Gray said. He added that there are plenty of hotel rooms and local law firms offer large conference rooms and capable support staff.

It’s a boon for the community at large, other lawyers said. The hotels, restaurants, copy services and court reporters all benefit when large bankruptcy cases are filed in Richmond.

The judges have not complained, lawyers said. “They like being busy with Chapter 11 cases,” one commented, noting that complex business filings are more intellectually challenging than routine consumer cases.

The trend is not altogether new, said Tyler P. Brown, chair of the Hunton & Williams bankruptcy practice.

Going “years back,” national bankruptcy lawyers have found Richmond easy to get to and a good venue for their work, he said.

“I think folks come away from Richmond saying they would love to have another case in Richmond,” Brown said.

And there’s room for growth, he said.

“We could use some more. I think the judges would be happy to have other complex cases come here,” Brown said.