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Virginia, an early adopter of rent relief for retailers, is bankruptcy's latest hot spot

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(Reuters) - As retailers continue to file for Chapter 11 in droves, the Virginia court where many of them are seeking relief is joining the ranks of the most popular jurisdictions for large business bankruptcies, alongside New York, Delaware and Houston.

The Richmond branch of the U.S. Bankruptcy Court for the Eastern District of Virginia has become a hot spot for financially strapped retailers, including J. Crew, Lord & Taylor, Ann Taylor's parent company, Ascena Retail Group, and Pier 1 Imports. The sudden uptick may be due in part to an April ruling from U.S. Bankruptcy Judge Kevin Huennekens in that case that permitted Pier 1 to put rent payments on hold, restructuring experts say.

Large companies, across all industries, seeking bankruptcy protection have for the past several years mostly filed their cases in New York, Delaware and Texas courts, which are known for efficient methods of handling complex Chapter 11 situations. Moreover, those courts are comfortable with the hefty fees charged by the law firms representing those companies.

Kirkland & Ellis represents nearly all of Richmond's current "mega cases." Its top lawyers in those cases charge up to \$1,825 per hour.

Before 2020, the most recognizable Virginia bankruptcy of the past few years was Toys 'R' Us in 2017, but the district's experience with high profile retailers stretches back to 2008 with Circuit City. The Richmond court hosted some notable coal bankruptcies from 2014 to 2016, but has since had relatively few "mega cases" compared with the other three courts.

But Huennekens put his court back on the map this spring when he became one of the first judges in the COVID-19 era to allow a corporate debtor to temporarily skip rent payments — an uncommon form of relief before the pandemic. His decision came on the heels of U.S. Bankruptcy Judge Vincent Papalia's March ruling in New Jersey pausing Modell's Sporting Goods' rent payments. Other judges quickly followed suit.

Huennekens' ruling, which came over the objections of landlords, sent a clear message to distressed retailers: the Richmond court will accommodate you, at least with respect to rent.

"It was kind of novel and not the kind of thing you see every day because usually the expectation is if a debtor is utilizing the leased space in the ordinary course, it's supposed to stay current on its rent," said Zev Shechtman, a restructuring partner at Danning Gill. "So we see a trend of a debtor-friendly judge willing to stretch out the landlords."

U.S. bankruptcy law offers Chapter 11 debtors leeway in determining where they will file for bankruptcy. Debtors are not required to file where they are headquartered or incorporated and can opt for a district where they have assets or a subsidiary. And, legislation to narrow bankruptcy venue options has failed to gain much traction.

"The worst thing for a company is to go into a jurisdiction and get stuck there ... you need a commercially savvy judge who not only understands business realities but how to move a case through," said Christopher Donoho, head of Hogan Lovells' global business restructuring and insolvency practice.

The flexible filing rules allow for some forum shopping. Debtors' lawyers can choose where they think they will find the most welcoming judge for the type of bankruptcy process they're running.

"A lot of times it's a specific judge you try and get. You can't always make sure that that happens, but there are certain judges within jurisdictions that are more accommodating, so there are tactics to get that judge," head of Duff & Phelps' New York corporate finance practice Josh Benn said.

One tactic is to file in courts with fewer judges that handle large bankruptcies, which provides more certainty that cases will be assigned to a judge whose prior rulings and general approach to complex cases are well-known and consistent.

Delaware and New York have six and nine judges, respectively. Their views on specific areas of bankruptcy law — such as issues surrounding potential post-bankruptcy litigation — sometimes differ from one another.

Richmond, which like Houston only has two judges that handle large Chapter 11s, is becoming a safe option for companies looking for friendly judges, according to McGuireWoods restructuring partner Douglas Foley. (Houston is home to the J.C. Penney and Neiman Marcus bankruptcies.)

"For companies and boards, that provides some level of predictability," Foley said.

(NOTE: A previous version of this story said Josh Benn was the chief of Duff & Phelps' corporate finance practice. He is the head of the firm's New York corporate finance practice.)

---- **Index References** ----

Company: ASCENA RETAIL GROUP INC; CARMAX INC; HOGAN LOVELLS INTERNATIONAL LLP; J CREW GROUP INC; JC PENNEY CO INC; KIRKLAND AND ELLIS LLP; MODELLS SPORTING GOODS; NEIMAN MARCUS GROUP LLC (THE); PIER 1 IMPORTS INC; TOYS "R" US INC

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