

More insolvent owners head to Texas



Rajesh Joshi reports on why foreign owners are filing for Chapter 11 bankruptcy in Houston

> **Most shipping bankruptcy filers still** choose Manhattan but Houston has arisen as an alternative venue. Several legal experts told *Fairplay* that Houston's emergence had more to do with law firm Bracewell & Giuliani and its partner Evan Flaschen than with any intrinsic merit of the city itself.

"It is not accurate to call Houston the destination of choice for shipping debtors," said Seward & Kissel partner John Ashmead. "Houston's status as a major port adds some allure but whatever flurry you are talking about is because of Bracewell & Giuliani and the fact that it has an office there."

Houston has hosted two shipping Chapter 11 cases since 2011: Omega Navigation Enterprises and TMT, with Flaschen spearheading both. New York filings over that duration have included TBS, General Maritime, and Excel, while Overseas Shipholding Group filed in Delaware.

Why did Flaschen choose Houston and how does he take the 'compliment' that he

started a new trend? "I live in Connecticut so Houston is inconvenient," he said. "This is not an anti-New York thing: we had Marco Polo file in New York. But Houston is an ideal location, depending on the debtor. It is the busiest port in the country and the courthouse is just blocks from the port. Judges there know maritime, products and tankers in particular."

Flaschen sees another advantage. There are five bankruptcy judges in Houston compared with 10 in New York, and their caseloads are lighter.

"Since the judges are not juggling dozens of cases, a debtor gets extra special attention," he noted. "This is particularly important when emergencies arise and in shipping they arise all the time: cash, bunkers, repairs, ship arrests. Houston judges can be easier to reach when issues need immediate attention." In general, Houston is less expensive, he added.

He rejected the notion that Houston offered a 'softer touch' for opportunistic foreign debtors: "[Omega boss] George Kassiotis and [TMT boss] Nobu Su have valid reasons to be in Houston. Their ships do extensive business there. For such debtors, it does not hurt that in Houston we never have to explain to a judge what 'bunker' means."

Ashmead, the unsecured creditors'

counsel in the TMT case, sees no difference between the level of judges' knowledge in Houston and New York or other venues. "The Houston bankruptcy court is a microcosm of the US system and a shipping bankruptcy is a microcosm of bankruptcies in all industries," he said. "On legal fundamentals, there is no difference from one venue to another."

"Whether the case is a clothing retailer, a hotel chain ... or the corner grocery, it gets a bankruptcy judge who may or may not have experience with that industry but who will uniformly apply existing bankruptcy laws and learn as he or she goes. It is not feasible to have a shipping bankruptcy judge and a steel company bankruptcy judge and an energy bankruptcy judge. US bankruptcy judges come from various backgrounds. Each is bound to have his or her first shipping case," he said. "This does not automatically make them unfit for a shipping bankruptcy."

Bruce Smith of Jager Smith, the unsecured creditors' counsel in the Omega case, agreed. "Houston is about the same as any other district with regard to its jurists' ability," he said.

Ashmead believes criticism of 'foreigners' seeking US Chapter 11 refuge is unfounded. "Few other places in the world have what the US has had for over 100 years: the ability to seek protection from creditors and a mechanism to reorganise a business instead of just letting it fold – benefiting creditors, employees, and vendors."

Flaschen's filings on behalf of foreign shipping companies in Houston and Manhattan have elicited criticism from some long-time players in the industry, but he strongly defends his cases. "I cannot re-emphasise enough that Chapter 11 is the second-worst possible option," he stressed, "with the only worse option being giving up and allowing an operating fleet to be repossessed because a consensual restructuring cannot be agreed." **E**

rjrnk@live.co.uk@ihs.com

> Key points

- Greek owner Omega Navigation Enterprises filed for Chapter 11 in Houston in July 2011; Taiwan's TMT filed in June 2013
- Opinions of lawyers diverge on whether one bankruptcy venue is better or worse than others

'Houston is an ideal location. Judges there know maritime, products and tankers in particular'

Evan Flaschen

Greg Miller