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Comments

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Comments

BRADY C. WILLIAMSON†

Thank you, Bill. Last year, I was involved in a significant Chapter 11 case venued in Delaware. And I will describe it briefly because it may offer something for everyone in this room.

The case involved the Northwestern Corporation; that's not the airline, at least not yet (laughter from the audience). It is, however, a large energy company in the northwest part of this country [U.S.]. It is headquartered in South Dakota. It serves 650,000 customers in three states. Eighty percent of its assets are in Montana. This case, of course, was filed in Delaware. Here's where it gets interesting.

Within three weeks of filing, the case was assigned—because of the work load of the Delaware judges—to a judge from Phoenix, Arizona. This judge held some of the court dates in Phoenix. Some in Delaware, to be sure, in Wilmington, but many were held in Phoenix. And since he's not hearing the cases over, I can say that with the exception of present company [the judges in the audience] that he's probably the best bankruptcy judge I have encountered.

The case was stunningly successful. It was over in about thirteen months; the company is now traded publicly and, by all accounts, it is a success. The debtor's counsel was from Atlanta, Georgia, the creditors' committee counsel was from New York. Our firm [Godfrey & Kahn, S.C.] represented the regulatory agency in Montana, the Public Service Commission. And I should add without false modesty that we may have been chosen by the regulatory commission because we did not charge \$800 an hour (laughter from the audience). But the reason this case has

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something for everyone is that it ended up being litigated primarily in Phoenix, Arizona. It gets better. When the particular judge's rotation was over, the case was assigned to a retired bankruptcy judge from Montana. That was post-confirmation, but just in time for the Montana judge to rule on the fee petitions (laughter from the audience). So, when all is said and done, there was a (hand motion to complete circle) rough justice in the case (laughter from audience)—at least from a venue standpoint. Let me say, having told that story, I am not quite sure of the moral of it, but it does end up being too recent for Professor LoPucki's data. It does offer some very interesting lessons about the modern practice of bankruptcy law.

Let me add a few comments about politics. Whatever the virtues and vices of the venue statute and practices in this country, they will not change in our lifetime, and definitely not for everyone with grey or no hair in this room. I will define lifetime very, very broadly. And the reason is quite simple. It lies primarily in the make-up of the United States Senate and the membership of the Senate Judiciary Committee. As long as Senator Joseph Biden of Delaware is in the Senate, which will be for a long, long time still—he's been there since 1972—and as long as Senator Arlen Specter of Pennsylvania and Senator [Charles] Schumer of New York hold significant positions—not only on the Judiciary Committee but within the Senate itself—the status quo will not vary. The prospects for change are (pause)—I don't even want to use the word "virtually"—the prospects for change (shakes head gesturing no) are non-existent. What you really have, in effect, is—again without making a prediction—an Amtrak lobby. And the lobby is simply all the good lawyers who live along the line from New York to Philadelphia to Wilmington to Washington, D.C. Given that reality, I simply do not foresee a change that is statutory. Now as Professor Jacoby and others have reminded us from time to time, the Code is not the only thing that drives Chapter 11.

I might add another point from the Northwestern case, which is in response to Professor Skeel's observation that lawyers, as case placers, take cases to Delaware because of the Delaware judges' experience. Two points: One, if the lawyers made that decision in this particular case as in a number of other Chapter 11s, they were sorely disappointed. They do not end up with Delaware's

experience. Instead, they end up with the experience of a judge who in this case happened to be terrific. Maybe that's not true in all cases. The second point is that having spent a lot of time with the lawyers for the debtor, for the committee, and for the secured lenders in the Northwestern case, the experience of Delaware judges was not the primary reason they went to Delaware. The reason they went to Delaware was their perception of the hospitality of the court—in no particular order, the court, the Third Circuit, and the convenience. There is certainly nothing wrong with that. If it were in the interest of my client, I would certainly rather file a case in Madison than in Phoenix, except during the months of December, January, and February (laughter from the audience). My last point, and this really relates to my second: the National Bankruptcy Review Commission's recommendations on venue were easily reached. I believe in each case the vote was 8 to 1. Some of you remember; we did not have that many 8 to 1 votes.

I will never forget that at the very first meeting of the Commission, I was approached by a very distinguished gentleman who introduced himself as a bankruptcy lawyer—a Chapter 11 lawyer from Wilmington. Surely, he said, we didn't see any need to tinker with venue or anything like that and if we were to take up the issue would we be sure to hear representatives of both sides. Of course, I said "yes," and we did have a hearing devoted almost entirely for one day to venue. The Delaware bar even submitted a brief. And it turns out that that very distinguished lawyer's name is Tom Ambro. Now, as many of you know, he is a judge on the U.S. Court of Appeals for the Third Circuit, which hears appeals from the bankruptcy court in Delaware. The appellate court sits in Philadelphia.

I would like to close by thanking Professor LoPucki. When it comes to venue, whether the emperor has clothes or does not have clothes, somebody had to ask the question. (clapping from the audience)

