

How a claims agent can maximize value and speed successful outcomes in Chapter 11 reorganizations

Daniel C McElhinney, Executive Director,
Epiq Bankruptcy Solutions LLC,
and Lorenzo Mendizabal, Managing Director,
Epiq Systems

For a company on the brink of a Chapter 11 filing, the goals are pretty simple: (1) enter bankruptcy; (2) survive; and (3) emerge from bankruptcy as quickly as possible. A full-service claims agent can help a company achieve these goals by focusing their talent and technology on the often complex administrative aspects of a Chapter 11 case.

The services provided can vary from straightforward tasks such as managing claims processing and noticing, to more complex projects such as developing an online claim form in order to streamline the bar date process. Regardless of the size or complexity of the case, the agent will be critical to the debtor company's success in mounting a speedy exit from Chapter 11.

Because officers and directors are not always familiar with the services, products and benefits a claims agent can provide, we will discuss each of these in turn, with an emphasis on how they can drive value for a debtor company before, during and even after a Chapter 11.

What does a claims agent do anyway?

To answer this question, we must first explain how an agent becomes involved in a Chapter 11 case. Normally, a debtor company is required by local bankruptcy rules to retain a claims agent where the anticipated number of creditors exceeds a few hundred. These rules acknowledge that the clerk's offices of many bankruptcy courts are not equipped, staffed or funded to fully manage the claims processing requirements of cases beyond a certain size.

Unlike the debtor company's legal and financial

advisers, who are retained as "professional persons" pursuant to Section 327(a) of the Bankruptcy Code, the claims agent is engaged pursuant to 28 USC Section 156(c), a non-Bankruptcy Code provision governing the outsourcing of administrative services otherwise provided by the clerk's office. The debtor's estate has to pay for those services, although despite the statutory basis for retaining the claims firm, it can quickly become an important part of the debtor's restructuring team.

The term "claims agent" does not adequately capture all of the services provided. Clearly, the management and maintenance of proofs of claim asserted against the debtor company are the core tasks, but the industry has evolved over the past 20 years to a point where it performs a far more diverse set of tasks. Among these are:

- Creating and hosting interactive restructuring websites.
- Providing data mining, preservation, cleansing and review services.
- Assisting with creditor communication, including establishment of a call center.
- Assisting in preparing the creditor matrix and schedules of assets and liabilities.
- Compiling documents for, and hosting, a virtual data room.
- Planning and placing notices for publication domestically and globally.
- Providing bondholder identification services.
- Co-ordinating balloting and tabulation, including to holders of public debt securities.

- Co-ordinating disbursements of cash and securities.

As expectations of a claims agent's services have grown, so too has the need for more specialized expertise. In the last five years in particular, there has been a noticeable increase in the number of bankruptcy attorneys and restructuring advisors joining agents and forming "consulting" groups. The need for experience in the legal and financial complexities of Chapter 11 has only served to increase the involvement of, and reliance upon, claims agents in the administrative areas of a case.

It has also helped to change the general perception of the firms. Once thought capable only of managing primarily ministerial tasks (claims intake, data entry, basic noticing), they are now seen as experienced administrators capable of advising on, and managing, the often complex aspects of large Chapter 11 cases.

It also helps that they have evolved beyond their initial form. Ten years ago, claims agents were privately owned, independent companies with little obvious investment in the development of new technology. Today, the leaders in the industry are part of larger, publicly traded firms where technology is a key component of the business plan.

As an example, the two leading claims agents, Epiq and KCC, are owned by public high-tech companies that provide services and solutions internationally in a variety of industries.

The capacity, leverage and expertise available to agents that are part of well-capitalized groups cannot be underestimated, particularly given the increasingly global scope of Chapter 11 cases.

How does a claims agent drive value?

In the current economic cycle, more debtor companies are seeking to shorten their time in Chapter 11 by commencing prepackaged or prearranged cases. Others are filing and immediately proposing to sell nearly all of their assets via a Bankruptcy Code Section 363 sale. In each of these scenarios, the desire is to have the debtor company (in its current corporate form or via acquisition by another) emerge from Chapter 11 in as short a time as 30 days. The speed of these cases crystallizes the value of a full-service claims agent.

Data collection

The likelihood of success in an accelerated Chapter 11 case can hinge on the debtor company's ability to collect all of the right data prior to or immediately after filing. In a traditional Chapter 11 case, there is

time to supplement or amend the company's creditor matrix or its schedules of assets and liabilities should new data be discovered. This is not true in an accelerated case.

For example, in situations where the debtor in possession has only 45 days to obtain court approval of the sale, finding out 30 days after filing that certain creditors did not receive the sale notice because their information was maintained in a long-forgotten database will not just delay the sale, it may kill it.

Similarly, the information provided in the debtor company's schedules and statement of financial affairs takes on a greater importance when creditors and an official creditors' committee are being asked to evaluate an accelerated sale. A material change to the schedules after they are filed will put immense pressure on the process and, again, jeopardize the sale. Given the absence of any margin for error, it is crucial for the debtor company to have the appropriate assistance at every level of the process.

A full-service claims agent will be able to help formulate and implement the data-collection process. The firm can work with the company and its advisers to identify the general types of creditors that should be captured. If on-site, the agent also can provide data systems and preservation specialists to assist the company's employees in creating queries that will capture the necessary data, and ensure that none of this is inadvertently deleted.

In many cases, the debtor company's leases and contracts are not maintained in a central location, and even less often are they maintained electronically. The claims agent can assist in the collection, data entry and scanning of contracts and leases, which can then be maintained on CD or in a virtual data room (see discussion below). Once gathered, the agent will often have technology that can be used to assimilate all of the creditor information into the correct format for filing with the bankruptcy court.

Data gathering on this scale is not usually straightforward. Every debtor company is different, and so questions inevitably arise as to whether certain information belongs in a particular schedule or as an answer to a question about a financial statement. An agent can help the debtor company and its advisers address these issues by drawing on its experience from other cases.

Just as important, the agent will have technology tailored specifically to the creation of schedules. These applications are frequently used

to consolidate disparate data points across many different debtors and then to produce all of the data by debtor in the proper bankruptcy form for filing with the court.

Interactive websites

A standard part of every new Chapter 11 case is the creation of a restructuring website through which the debtor company can disseminate information and notices. The separation of this site from the debtor company's existing corporate/sales website is intentional, as most businesses in this position prefer not to muddle positive messages with bankruptcy information. In addition to the content and key documents identified by the debtor company, clients and the general public receive automatic updates as to what is filed on the bankruptcy court docket at no cost. The restructuring website also includes "Contact us" information allowing creditors to submit questions.

Certain claims agents have the technical capacity and technology infrastructure to develop and host customized online claim-filing. Doing so increases efficiency and reduces the costs of managing the claim-filing process. Specifically, charges associated with the intake of physical claims, scanning, data entry, quality-control review and physical storage are all eliminated through the use of online claim filing. Having the data in an immediately available format speeds its transfer to the debtor company and its advisers, who can then begin claim reconciliation that much earlier. In cases with a large number of international creditors, utilizing a claim-filing site will reduce costs and administrative hurdles unique to non-US creditors.

Virtual data rooms

Virtual data rooms (VDRs) are web-based document-storage sites created to disseminate information simultaneously and confidentially to multiple users. Aside from being a valuable repository for contracts and leases, one of the most common applications of a VDR comes in a sale of substantially all of the debtor company's assets. When a sale is planned for early on in the case, establishing a due-diligence room with all of the company's key financial data is one of the first steps in the process.

Full-service claims agents not only provide VDRs, they also offer full management of the rooms. In certain cases, this will mean going on-site to multiple locations to pull and scan hard-copy versions of key contracts and leases for uploading

to the data room. After this, the agent will work with the debtor company's advisors to identify and categorize the files.

Perhaps the most important task, however, is ensuring that permissions to the site are set correctly. The worst case is that a prospective bidder, particularly one that may also be a competitor, inadvertently gains access to confidential information.

Virtual data rooms are also valuable when gathering data for use in preparing first-day motions. In years past, key data collected from the company would be emailed, or copied and circulated in paper form, to those involved in the drafting of these motions. Recipients could include the client, financial advisor and one or more law firms. With a VDR, the information can be loaded into a secure, centralized platform that can be accessed by all the debtor company's advisors, resulting in a higher degree of confidentiality and efficiency in the critical days leading up to a Chapter 11 filing.

Call centers

How well a debtor company manages communications with customers, employees, vendors and others at the point of entering Chapter 11 can materially affect its ability to reorganize successfully. Managing this part of the process well usually results in the public having a clear understanding of the reasons for filing and the debtor company's plan for exiting Chapter 11, thereby limiting any negative impact on performance, customer orders and vendor issues. Manage it poorly (or not at all) and what could result is an avalanche of angry customers and confused and frustrated vendors. In light of all this, debtor companies, big and small, are utilizing call centers to help address questions from their various constituencies at the beginning of the case, as well as at other key points.

A claims agent can help in establishing a call center and provide model scripting and other communications assistance. Such facilities are capable of providing recorded messaging and live operators in multiple languages. Messaging can be used to direct different customers to information that pertains to them specifically, resulting in a better experience for the caller and, therefore, better value for the debtor company.

Additionally, having a call center in place at the time of the filing will save employees and advisors from being inundated with hundreds if not thousands of calls. The cost savings and increased

productivity that result are hard to quantify, although they do tend to have a favorable impact on a case.

Expert services

When a claims agent firm has experienced restructuring professionals on its staff, the conversations with the debtor company and its legal and financial advisors are more informed and valuable. There is no gap in understanding as to the way ahead. In many areas, in fact, claims agents are active participants in discussions over how best to advance the administrative process.

In many prearranged cases, the debtor company files a plan and disclosure statement with the Chapter 11 petition and seeks to confirm the plan in four to six months. Unlike in prepackaged cases, which immediately move towards a confirmation hearing within 30 days, many of the usual milestones of a Chapter 11 case must occur in a prearranged case before a hearing can be held. Thus, schedules and statements must be filed, a Section 341 meeting held, a bar date set, a disclosure statement hearing held, and solicitation and tabulation of votes on the plan must take place, all within a much shorter timeframe than in a usual case.

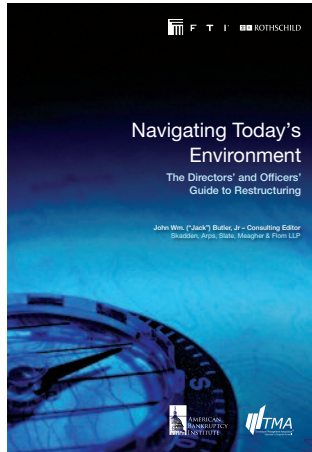
As the entity distributing the various all-creditor notices, processing the proofs of claim received, and co-ordinating the solicitation and tabulation of ballots on the plan, among many other tasks, the claims agent must be consulted to determine if the proposed timeline can be achieved. The restructuring professionals on staff at full-service agents, calling on their detailed knowledge of the local and bankruptcy rules, as well as their experience in handling expedited matters in many other cases, are uniquely qualified to inform the debtor company and its advisors on what is possible.

Another example of the value provided by a claims agent is in the area of public securities solicitation. This is a very specialized discipline and one that requires professionals who can speak the language of Chapter 11 while also conversing fluently with Wall Street back-offices and depositories.

Conclusion

The debtor company, which is to say its officers and directors, in consultation with legal and financial advisors, will usually have a clear idea of the legal, operational and financial path to a successful Chapter 11 restructuring. Officers and directors

could risk significant delay and, potentially, jeopardize the restructuring if the administrative aspects of the process are not considered. It is in this area that the claims agent can make a difference in a successful reorganization.



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