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Issues and Information for Today's Busy Insolvency Professional

## Chapter 11 Data Collection in the Information Age

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We live in the "Information Age," and this has never been more true than in chapter 11 administration. Although speed is important, efficiency and accuracy are vital components for the proper expedition of a chapter 11 filing.



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From the initial creation of the creditor matrix, all the way through the notice of emergence and subsequent distributions, the debtor's transition from a beleaguered company to a healthy restructured

one depends on the swift conveyance of accurate information. Anyone who has surfed the Internet knows that information changes in a nanosecond. Before you know it, you can be left with data that is outdated, inaccurate or just plain wrong. When time is of the essence, early intervention is the key. The sooner a debtor brings an administrative partner (the claims, noticing and balloting agent) on board, the smoother each step of the process will be, and as each step builds upon the information provided in the previous one, the vital role the administrator plays cannot be underestimated.

### Before the Beginning

Before a company files its petition and first-day motions, a tremendous amount of data must be gathered, processed and formatted to comply with the Bankruptcy Code and Rule requirements for, among other things, the filing of the list of creditors and the creditor matrix. This process places additional burdens on the potential

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debtor, as it must be completed while the company simultaneously continues its day-to-day business operations. The collection of this information must be done with minimal premature disclosure to employees of the company's potential plans. These are not easy tasks for a company focused on the larger issues of acquiring debtor-in-possession (DIP) financing, identifying operational problems necessitating first-day relief,

to the petition date to prevent such a scenario. In order for all of this to happen in a timely fashion, significant preparation is necessary. The more time given to cleaning up the data, the greater the accuracy and deliverability of the notices. Additionally, the raw data must be conformed to the court-approved format of the creditor matrix, which can vary from district to district.

In many bankruptcy cases there will be multiple debtors, divisions and subsidiaries, each using a different accounting system. The data provided from each will most likely be formatted differently, requiring it to be massaged, processed and integrated into one cohesive list. Often the debtor's programmers do not—and cannot—know the final purpose of the data files

## Feature

reviewing contractual obligations and making crucial decisions about the company's future. Bringing an administrator aboard early, especially one who knows the process from the beginning, knows what to do and what to ask for, will streamline the process and ultimately reduce the company's costs.

The creditor matrix is the foundation for noticing, schedule creation, claims filing, balloting and distributions. The wider the sweep, the more accurate and deliverable the name and address information, the more assured will be the effect of the court's orders including, but not limited to, those related to discharge. The last thing any debtor wants, months or years down the road, is to uncover a creditor or group of creditors who were not properly noticed and who may, therefore, not be subject to the court's orders. It is important to gather and process the most accurate, complete information as possible prior

they are producing, so the information is gathered blindly. This is where the marriage of technology and human experience serves the process. The data from these different systems may be duplicative in some areas and not others. Obviously, sending five notices to the same creditor using five different spellings of a name is not efficient or cost-effective. Identifying these duplications can be achieved using the latest software, but ultimately, it is a trained eye that makes the final determination to hit the delete button. Eliminating duplicate creditors at the onset decreases the debtor's overall expense by reducing printing and postage costs. The cost associated with cleaning up this data saves time and expense at each subsequent step of the process.

The earlier that duplications or holes in data are revealed and corrected, the more quickly creditors will be properly

noticed in both the immediate situation and further down the road. There are many other challenges associated with cleaning the raw data collected for the creditor matrix:

- Simple things, such as fixing the alpha sort of a creditor's name may seem mundane, but when a creditor is sorted under "Treasurer" instead of "City of Springfield" it can create many headaches down the road.
- Many vendors pay and are paid via an automated clearing house or wire transfer, so address information from an accounts payable system may be old, inaccurate or incomplete.
- Communicating with vendors exclusively through telephone or e-mail has become commonplace, thus up-to-date street addresses and fax numbers are missing for these potential creditors. For these and other reasons, many creditor names are transferred to the noticing agent without a street address, city or zip code.
- With the ever-increasing global reach of many corporations, there is a huge growth in foreign-address creditors. If a debtor's internal system does not accommodate or reflect a foreign address, it will impede delivery.
- Creditor data may be embedded with personal information, like Social Security, bank account or case numbers that will need to be removed to maintain privacy.
- Mailrooms of large corporations such as telephone or utility providers may not know where to forward a proof-of-claim form if there is no "attention to" person within the address.
- A lockbox, post office box or bank address that receives delivery of checks for payment is not likely to be the proper delivery target for a bankruptcy notice.
- Absent a complete address, a vendor number may be the only way of tying the correct liability to its proper debtor. Different company divisions may use different vendor-numbering systems, complicating this task. The importance of vendor number data cannot be overstated.

Since each step relies on the accuracy of the information from the preceding one, staying on top of each change is vital. If, for example, a §341 notice is returned as undeliverable, this is the crucial juncture to obtain updated delivery information before mailing

the bar date notice or voting package. If the only current address for a creditor is a post office box, this is considered undeliverable by companies like FedEx, who do not deliver to post office boxes. It is ideal to address, assess and resolve these issues early in the arc of the bankruptcy procedure.

### ***Serving the Critical Players***

Most first-day hearings occur within two business days of case commencement. Effective dissemination of notice of the hearing is crucial, as parties need to know if their rights are being affected. When compiling the list of the top unsecured creditors for the bankruptcy petition, the address, contact, telephone and fax number information needs to be current and accurate. If one division of the debtor uses "The ABC Co." and another uses "Apex Battery Company" for the same creditor, finding and eliminating this discrepancy could change the composition of the list. These major players, some of whom may end up on the creditors' committee, need to be served efficiently and kept in the loop every step of the way. More importantly, the U.S. Trustee will need accurate information when the time comes to appoint members to the creditors' committee.

Furthermore, if a utility notice needs to be served, using a quick and proper delivery may mean keeping the lights on for the reorganizing debtor. If a bank is to be timely served to prevent the debtor's checks from bouncing, sending a notice to a lockbox will not suit that purpose. If leases are about to be assumed or rejected, a landlord may need every day possible to respond before the given deadline. Once the filing commences, a debtor will be so absorbed with putting out these and other fires and may not be able to focus on finding a proper zip code or working fax number.

Sometimes a fax may be the most efficient way a debtor has of delivering a time-sensitive notice. Because e-mail has basically replaced fax transmission as a form of communication, the debtor may not keep this information in its AP system. Finding and extracting fax numbers from invoices will be time absorbing and costly, but having them can save thousands of dollars in overnight delivery charges. Web searching can be helpful but also time-consuming and carries no guarantee of the validity of any information that

is found. Keep in mind that there is no way to pre-test fax numbers without disclosing sensitive information ahead of time, so the earlier the understanding of the landscape of creditor information, the better. For any party who has filed a Notice of Appearance and Request for Notice, e-mail has become an increasingly important way of keeping up to date with all the proceedings. E-mail delivery is an increasingly viable option for the service of notices but it also has its pitfalls. Sending an e-mail to a bad address may or may not result in an undeliverable message, depending on the protocol of a company's Internet service provider. As electronic service gains ground, it becomes all the more vital to have accurate information. A misspelled street name will still result in the delivery of a notice, while a misspelled e-mail address will not.

Technology is a financial boon to any debtor trying to keep costs down. To produce and deliver notices by FedEx or the U.S. Postal Service can be very costly and time-absorbing. If a time-sensitive notice can be delivered by fax or e-mail, it has the double benefit of lowering the cost of delivery and reducing the timeframe of delivery from a couple days to a couple of seconds. Assuring delivery is dependent on accurate and current fax numbers and e-mail addresses, which are easier to acquire earlier on when the debtor is already in the process of gathering information for the creditor matrix.

### ***Moving Forward***

It is important to remember that the filing and noticing process has and will undoubtedly continue to change. It is crucial to be able to adapt to the latest technology and implement improved efficiencies. The real expertise comes from those who understand the minutiae of what it takes to serve a 10-page notice to 1,000 creditors on a holiday. With progress come new challenges. How do you guarantee the privacy of creditor information in this day of identity theft? How do you gather information for a bankruptcy filing while not disclosing knowledge of the filing to the employees who can provide you with the information?

Confirming the deliverability of addresses with zip-plus-four software and finding working fax numbers and active e-mail addresses require both innovation and knowledge of the latest technologies available. There may be no way of knowing if an e-mailed notice

ends up in a spam folder, so how will the debtor and/or the courts deal with this issue in the future? If the technology does not exist yet, then it will be the seasoned professionals who will work with their programmers to develop ways to streamline the process for the debtor.

It would be wise to take a lesson from the bankruptcy courts, which have been on the forefront in adopting this new technology. With their reduced paper module, they are not only supporting the planet-friendly green movement, but are working to reduce the administrative costs for financially-strapped debtors. Administering the aspects of a chapter 11 bankruptcy is not something to turn over to amateurs. The best possible scenario for a company already on the brink is to bring in the seasoned pros earlier rather than later.

Even with the advent of technology, it is still going to be the trained eye that catches flaws. The value of an experienced partner is that he or she can anticipate an issue down the road by evaluating the information passed to her today. A technology is only as good as those who designed it, but knowledge and experience cannot be programmed into a piece of software. Better to bring in your administrative partner early to help you before things get out of hand. ■

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