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Chapter 11: Managing the Matrix

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A successful emergence from Chapter 11 bankruptcy is contingent upon the proper noticing of all potential creditors. From day one, and the creation of the creditor matrix, all the way through the final check distribution, a debtor in possession's shift from a struggling company to a healthy and profitable one relies heavily on the rapid communication of accurate information to all the appropriate parties. Prior to filing its petition and first-day motions, a debtor must collect a tremendous amount of data and then format it to comply with code and rule requirements, which can vary from district to district. This process is no easy task for the debtor as it must be completed while the company simultaneously continues its everyday business operations and works to acquire financing. Additionally, the company must maintain a high level of discretion during this process, keeping as few people as possible "under the tent" of the potential bankruptcy filing.

The foundation for noticing -- and everything that follows -- in a Chapter 11 case is the creditor matrix. The more accurate and deliverable the initial name and address information is, the more confident the debtor company can be that all debts will be discharged. No reorganized company wants to hear, months or years down the road, from a creditor or group of creditors who was not properly noticed, and who may, therefore, not be subject to the court's orders. In order to prevent such a scenario, significant preparation is necessary. Obviously, the more time given to collecting and cleaning up data, the greater the accuracy and deliverability of the notices will be. But time is a luxury a reorganizing debtor cannot always afford.

Compiling a company's creditor data may not be as easy as it sounds. Even though every company has systems in place to communicate with their vendors, customers, employees and contractual parties, these all may be in self-contained, separate systems. If a Chapter 11 case is

comprised of multiple debtors, divisions and subsidiaries, each using a different accounting system, the data provided from each may need to be reformatted so it can be integrated into a cohesive list. The data from these different systems may be duplicative in some areas and not in others. Obviously, it is not cost effective to send five notices to the same creditor using five different iterations of its name. Reducing these duplications can be achieved using the latest software, but it is ultimately a trained eye that will make the final determination to hit the delete button. Eliminating duplicate creditors at the onset lowers the overall expense for the debtor by reducing printing and postage costs, eliminating calls from confused creditors and circumventing the duplication of claims filed against the debtor. The costs associated with cleaning this data up front will save time and expense at each subsequent step of the process.

The simplest things, however mundane they seem, can improve the creditor matrix and streamline the noticing process. These include things such as: fixing the alphabetic sort of a creditor's name; conforming each individual's name to a "last name/first name" format; insuring foreign addresses are properly formatted to the postal system of delivery; removing and redacting personal information (such as social security numbers) from address data; having current phone and facsimile numbers handy for blast faxing creditors about last-minute hearing changes; making sure missing street addresses, cities, states and zip codes are found and accurate for vendors that are dealt with exclusively by phone, fax or e-mail; locating street addresses in place of post office or lock boxes; and finding the name of an attention person for notice delivery so that notices don't end up in dead-letter bins at large corporations, or worse, be returned as undeliverable.

Since each subsequent step of the Chapter 11 process relies on the most current and up-to-date information, staying on top of each change is vital. If, for example, the notice of commencement is returned as undeliverable, this is the crucial juncture to obtain, if possible, updated delivery information before mailing a bar date notice or voting package. If the only current address for a creditor is a post office box, it is important to know that this is considered undeliverable by FedEx. It is ideal to address, assess and resolve delivery issues early in the arc of the bankruptcy procedure, but remember to re-evaluate things at each phase as sometimes a case can proceed for months and years.

Most first-day hearings occur within two business days of a case commencement. The top 20 creditors, some of whom may end up on the creditors' committee, need to be noticed immediately and kept in the loop every step of the way. The U.S. trustee will need accurate information about these major players when the time comes to appoint members to a creditors' committee. Furthermore, if utility notices are to be served, quick and proper delivery means keeping the power on and the telephones working for the reorganizing debtor. To prevent the debtor's checks from bouncing, the debtor's banks will need to be served, but sending a notice to a remote lock box will not suit that purpose. Landlords will need to be kept informed so finding their proper noticing addresses embedded somewhere on a lease agreement is vital.

If a fax is the most expedient way of delivering a time-sensitive notice, working fax numbers have to be at the ready. Since e-mail has largely replaced facsimiles as a primary form of communication, the debtor may not have fax numbers readily accessible. Finding and extracting fax numbers from invoices may be time absorbing and costly, but having them ready can save

thousands of dollars in overnight delivery charges. For any party who has filed a notice of appearance and request for notice, e-mail delivery has become an increasingly viable option for the service of notices. After the parties to be e-mailed have consented to receiving notices via electronic mail, there are other pitfalls to be avoided. Everyone has experienced mistyping an e-mail address. Sending an e-mail to a bad address may or may not result in an undeliverable message, depending on the protocols of a company's Internet service provider. As electronic service gains ground, it becomes all the more vital to be accurate to the letter. A misspelled city name will still result in the delivery of a snail mail notice, but a misspelled e-mail address will not.

It is important to remember that filing for Chapter 11 and the accompanying noticing process have changed over time -- and will undoubtedly continue to do so. It is crucial to be able to adapt to the latest technology, and to design and implement improved efficiencies. With progress, however, come new challenges. As more and more bankruptcy information is migrating to the Internet, vast amounts of information are just a mouse click away from any user. Guaranteeing the privacy of creditor information in this day of identity theft is another critical challenge. Confirming the deliverability of addresses with cutting-edge software, as well as finding working fax numbers and active e-mail addresses require both innovation and knowledge of the latest technologies available. But if you use all the tools available, and maintain data that is current and accurate, you will find that your emergence from bankruptcy will put your debt worries where they belong: behind you.

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