



# Business Reorganization Committee

## ABI Committee News

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### Five Things to Expect from Your Claims Agent

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Even the smallest chapter 11 reorganizations are complex, with many process handoffs, transactions and communication touchpoints. For cases with substantial or volatile creditor populations, the selection of a claims agent capable of helping a debtor company emerge from chapter 11 successfully can be critical.

Claims agent services vary from basic administrative work, such as noticing and validating proofs of claims, to other projects including building online claims forms and creditor portals, and highly complex financial balloting and solicitation work. The ultimate goal of a good claims agent should be to streamline the bar date process and reduce administrative overhead for the debtor company. The best claims agents have developed reputations for serving as invaluable assets to debtors' restructuring teams by developing solutions to process challenges. In selecting a claims agent, it is important not to overlook the basic services provided. Below are the general key factors to consider when choosing a claims agent.

#### Basic Services

First and foremost, you need to be sure that your claims agent can provide the core

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tasks at hand: management of the claims process and noticing. It is also important to be sure that your agent has the capacity for flexibility and specialized services, and can scale should the need arise—even if your case seems straightforward. See Figure 1. Do not overlook a service portfolio that includes expertise in areas that seem tangential. The temptation for a company facing the fiscal restrictions of chapter 11 is to look for an agent that advertises the lowest unit cost for the most basic services. This tactic is sound if the timeframe is not rushed and the parameters remain basic and unchanged.

**Figure 1: What Are the Full-Service Claims Agents Capable of Doing?**

• <i>Claims processing and noticing</i>
• <i>Creditor communications, including call center establishment/management</i>
• <i>Restructuring websites</i>
• <i>Balloting and tabulation</i>
• <i>Creditor matrix and schedules of assets and liabilities</i>
• <i>Bondholder identification</i>
• <i>Cash and securities disbursements</i>

The success of an accelerated case, however, can hinge on the claims agent's ability to stay with the pace set by the debtor company for its case. If the parameters of the case change, a claims agent that offers only the basics is no longer the cheapest option. If crucial data is missed or processes go awry and require re-engineering, the costs can quickly balloon. Add to that the danger that a sale or reorganization on a tight timeframe can be blown entirely on a single mistake—for example, learning that claim transferees failed to get the asset-sale notice because the claims agent was unable to keep up with the volume of trading or the database was not set up to properly manage multiple address listings—and the cost has just increased substantially.

### **Talent Level and Expertise**

Like surgery, even a simple chapter 11 case can become complex in a matter of moments. When choosing a hospital, do you choose the one with the lowest cost, or the one with the best doctors on staff? Even for a simple procedure, it is important that medical professionals with specialized expertise—even if you do not pay for their services—are available in case something goes wrong. In chapter 11, if a process is flawed or communication channels are poorly managed, disaster can strike, resulting in angry creditors and creating greater issues for the company and its professionals. Most companies in chapter 11, like most patients, prefer to have even simple procedures performed at the best facilities available, staffed with the best experts.

Some claims agents employ experts experienced in the legal and financial complexities of chapter 11 on a global scale, and experts with specialized expertise in specific areas of chapter 11 administration, such as data collection, creditor, customer and vendor communications, or public securities solicitation. While you will

not pay for those experts' services unless you need them, they will be available to oversee the process and will have trained the staff working on your case. A full-service claims agent will be able to immediately and efficiently provide specialized knowledge on demand for any type of case or any problem that arises. With claims agents lacking these sorts of experts, debtors may need to hire outside professionals at a premium, contract with a second claims agent, or waste precious time while the process gets bogged down. In bankruptcy, time is of the essence. Having professionals trying to get up to speed with looming deadlines is a recipe for disaster.

### Use of Technology

One way that the best claims agents are able to offer tailored services at a similar cost to more basic providers is through the use of the latest technology. It is important that your claims agent also provide proven, integrated technology to support its claims administration, noticing balloting and disbursement processes. Several layers of quality controls should also be in place on both the software *and* the process sides of operations. Therein lies the difference between glossy, self-standing claims-management software and fully-integrated, complex-case-tested applications and services. See Figure 2. Efficient and fully integrated processes take years to develop. The best claims agents are always tweaking their processes to develop greater efficiencies and quality controls.

Some agents have the technical capacity and infrastructure to develop and host customized online claim filing like that used in

**Figure 2: Ancillary Services: What Else Should Your Service Provider Offer?**

• <i>Data mining/preservation</i>
• <i>Claims reconciliation</i>
• <i>Electronic discovery</i>
• <i>Virtual data rooms</i>

the Lehman Brothers Holdings Inc. chapter 11 case and the Lehman Brothers Inc. Securities Investor Protection Act proceedings. Additionally, only some claims agents make available virtual data rooms, which are online versions of traditional data rooms that enable a party to disclose a large amount of confidential data at a fraction of the cost of a physical data room. Virtual data rooms deliver limited-controlled access to an Internet site, which provides for the secure, online dissemination of confidential information—and are of immense use to bankruptcy proceedings.

Virtual data rooms are one example of the type of user-friendly technological innovation that can reduce costs and streamline processes—in this case by establishing a secure, accessible due-diligence electronic “room” with all of the company’s key financial data. In our experience, we have seen data rooms used very effectively for a number of things, including managing access to documents with a

board and/or creditors' committee. We have also seen data rooms used for claims reconciliation and gathering data related to executory contracts.

### **Proven Processes**

Longevity and stability also come into play. Proven business processes that have delivered defensible, time-tested success in complex chapter 11 cases are a debtor company's best bet. Claims agents without well established processes are forced to engineer new steps for each case—setting up call centers for the first time, learning to identify and retrieve data on the fly, or experimenting with unproven task handoffs or business processes—a learning curve a debtor company facing the stress of chapter 11 can ill afford to bankroll.

Aside from the increased quality levels derived from proven and tested processes, well-established processes will likely have been streamlined over time. Needless duplication from handoff overlaps will have been eliminated, and system shortcuts will have been implemented – all resulting in greater quality and lower cost to the client.

### **Overall Cost**

Carefully consider the initial cost estimate against the value your claims agent will deliver. One should not recommend or select a claims agent based on unit pricing. Experience and past performance should be determinative factors, as should superior staffing, proven abilities and processes, state-of-the-art facilities and technology, and the flexibility and resource availability to respond to an emergency should one occur. Consider asking for total costs for similar cases the agent has handled in your industry. As opposed to an estimate, this provides you with actual numbers that will likely be more consistent with what you will experience.

As cost is always important, debtor companies should focus on the level to which the agent offers integrated technology and understand their reputation for process quality and efficiency. Other related and important questions include: Could they quickly respond to a complication? Do they have staff members on hand with practical experience in your industry? Can they help with data preservation if needed? When in doubt, choose or recommend the provider with the capacity, leverage and expertise available to address increased complexity and ramp up as needed, rather than basing your choice on unit pricing.

### **Conclusion**

There is a lot riding on your claims agent's ability to perform effectively before, during and after chapter 11. It is important to choose a claims agent with both a track record of success in the basics as well as the ability to scale up or easily handle

complexity in case you hit a roadblock or there is an unexpected development in the case. In the end, experience, capacity and efficiency deliver the best product at a good cost. What you want to avoid is having to re-do work, repair a broken process or re-engineer a system mid-reorganization because these could jeopardize the company's viability and damage your reputation.

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