

Claims Chat

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“Collaborate,” Not “Dictate”

The Importance of Collaboration in Structuring a Successful Claims-Resolution Process



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While each corporate debtor and chapter 11 case is different, what all (or substantially all) have in common is the need for a process to resolve the numerous proofs of claim filed against the debtor. These processes can range from simple and straightforward to vast and unwieldy, with no two processes exactly alike. In order for the claims-resolution process to be successful, it is important for case professionals to prepare the company in advance for the process and have a plan for collaboration in order to maximize efficiency.

Collaboration is critically important, as the professionals will likely need to deal with numerous debtor employees and departments, as well as with the debtor's other advisors. Ensuring that all parties are rowing in the same direction is key to a successful process, regardless of the level of complexity the process involves.

A well-run claims-resolution process will involve a series of phases, including the creation of the company's schedules of liabilities, creating a claims database, providing notice of the bar date for filing claims in the bankruptcy case, reviewing the filed claims, and negotiating or litigating objectionable claims. While each company is different, input and guidance will likely be needed from a broad range of people within the company, as well as third-party advisors to the company.

What can often be a time-consuming and sometimes frustrating process can be streamlined by forging trusting relationships with the appropriate people within these departments and with the company's other advisors, creating a collaborative claims-resolution team, educating the client team on the goals of the claims-resolution process, and working with them to design a work plan that fits the needs of the process. This article will discuss the areas where the company staff, bankruptcy counsel and financial advisors can focus on collaboration and communication to realize efficiencies and pave the way for a successful claims-resolution process.

Early Collaboration: Schedules of Assets and Liabilities

Getting an early start on collaboration in the claims-resolution process will allow for a more efficient resolution process as the case develops. A well-run process should begin, if possible, even before the case is filed, with the preparation of the schedules of

assets and liabilities. These documents are a perfect entry point into the claims-resolution process because they require a substantial amount of information-gathering from a variety of sources within, and sometimes outside, of the company. A thoroughly vetted set of schedules also is typically the backbone of the claims review and resolution processes.

When beginning to assemble these schedules, restructuring professionals should build a collaborative team that includes the company's CFO, comptroller, in-house counsel, risk-management personnel, supply-chain staff, accounts payable staff and outside litigation attorneys (if applicable). In the time of crisis leading up to a bankruptcy filing, these key company personnel will likely be focused on the more pressing and immediate issues of reorganizing the company, saving jobs and providing maximum recoveries to stakeholders. However, it is in everyone's benefit, once the team has been assembled, to organize a claims-process kick-off meeting to explain the life cycle of the claims-management process: scheduling liabilities, noticing the bar date, claims database preparation, claims reconciliation, and ultimately resolution through negotiations and an in-court objection process.

During this meeting, the company team members can be educated on the importance of each step in the process and how the process will work in terms of timing. Company staff can provide feedback to the restructuring professionals on timing, company processes and sensitivities regarding the treatment of important vendors and creditors, whose continued support might be needed during and after the bankruptcy case. This big-picture view of the claims-resolution process and its components will help the team members understand the key roles they will play in the process, which will help the professionals create a process that maximizes efficiency and minimizes frustration.

In addition, this early meeting can help educate the company on the amount of work that could be involved in resolving all of the claims, as well as the timing for that work. The claims-resolution process will often take place after the plan has been confirmed and the company is “out” of bankruptcy. Yet for company staffers, the claims process can last for months or years after. It is important to set expectations for the company regarding the timing and necessary time commitment of key company

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staff. This knowledge will also help the company in communications with its vendors. A well-run claims process can be an important component of maintaining vendor relations in a post-chapter 11 environment. Typically, in the initial meeting, the critical tasks associated with the creation of the schedules and initial claim-resolution steps will be allocated as follows:

- *Company*: the production of detailed scheduled liability data;
- *Financial advisors*: data validation, development of formal schedules; and
- *Bankruptcy counsel*: assistance with liability classification (e.g., whether a claim is secured, unsecured, entitled to a priority treatment, etc.), legal review of claims to determine whether claims are appropriately disputed, filing procedures, drafting of bar date motion.

There are numerous other opportunities for collaboration in connection with the preparation of schedules. For example, debtors’ historical record-keeping practices fall short of the level of rigor required during the bankruptcy process. Restructuring professionals will often need to work closely with the resolution team to build detailed records supporting the scheduled liabilities — and, potentially more importantly, any objections to claims — that will prove sufficiently robust to prevail throughout the reconciliation process. Wherever possible, the professionals and resolution team should develop invoice- or transaction-level detail to support the scheduled liabilities. The results of this work will become an anchor of the resolution process and the claims database, especially when it comes to resolving disputed claims with creditors or providing necessary support for substantive claims objections. Bankruptcy counsel can also play an important role in the scheduling process by verifying treatment of certain liabilities, with the goal of reducing the burden of claims-reconciliation work in the future.

Collaboration on Initial Claims Review, Matching and Claim Determinations

One of the most important jobs in the claim process is reviewing the filed claims. Estate professionals will need to coordinate with the company to allocate responsibility for that review in a manner that maximizes efficiency.

As an initial matter, it often makes sense for the company’s financial advisors to bear much of the burden of the initial review, since it will likely be the keeper of the claims database. This “first cut” review will likely include ensuring that claims are timely filed, identifying duplicative or incomplete claims, matching claims to scheduled liabilities, and categorizing claims that the company did not recognize in its schedules. The potential claim objections are then placed into various resolution categories so that the claims can be organized and delivered to the specific company sub-teams that will assist in a deeper review and reconciliation (e.g., tax, accounts payable, contracts, litigation, etc.).

It generally makes sense to establish parameters for the allowance of filed claims that are equal to (or appropriately

close) to the amounts presented in the schedules without further company review. Eliminating the need for further review by the company will typically be appreciated by the company’s staff, who will often have their hands full trying to make the reorganized company a success.

Where further claim review is required, the company will often lead the charge in undertaking a deeper review of the claims and recommending allowance, disallowance or modification of the claim. Financial advisors can help, as requested by the company, to review books and records, and speak to line employees at the company to ensure that services were performed or products were delivered, and otherwise to support company staffers in this deeper review effort.

In this phase, the role of bankruptcy counsel is generally to collaborate with the company and its financial advisors in order to provide legal analysis regarding the claims that are being reviewed. Bankruptcy counsel often will also coordinate with third-party outside counsel with unique subject matter or factual knowledge regarding the reviewed claims, ensure that all applicable deadlines are met, and generally oversee the process.

Resolving Disputed Claims

One key strategy for streamlining the claims-resolution process is to obtain court approval of procedures for filing omnibus objections to claims. These procedures are commonplace and, if approved, permit the filing of numerous claim objections in a single pleading, including on substantive grounds for which an individual objection is typically required under the bankruptcy rules. Bankruptcy counsel will typically take the lead in formulating and seeking approval of these procedures, but client input can be highly valuable. When seeking approval of claim-resolution procedures, it is worthwhile to review previous procedures approved by the particular judge before whom the case is proceeding. Some judges could have specific concerns that should be addressed.

Once the procedures are in place, it is likely that bankruptcy counsel will begin filing formal objections to the claims, though depending on the nature and volume of the claims, some effort might be made by the company and its bankruptcy counsel to seek to resolve claims consensually before a formal filing is made. Collaboration is required with respect to the identity of the claims to be objected to, the timing of those objections, the order in which claims are objected to and the substance of the objections.

Collaboration is further required to meet claimant responses to the debtor’s claim objections. Bankruptcy counsel will rely heavily on company staff and the financial advisors in order to provide factual support for the objections, including to identify supporting documents and witnesses, and engage with objecting claimants to the extent appropriate.

Managing a large volume of pending claim objections also takes substantial collaboration and communication. One collaborative tool that can be used to assist in claims

management is regular reporting. Debtor professionals can assist the company teams (and each other) by tracking specific claim statuses as they change from open to resolved. Thorough tracking of reports — circulated to all on the claims-resolution team — will also reinforce the integrity of the information held in the claims database, as resolution teams are given the opportunity to review the reports and confirm claims treatments.

Further, issue logs can be created and addressed during regular status meetings to improve efficiency in reconciling difficult classes of claims. Good, accurate status reporting will limit duplicative work efforts, limit the expense of professionals, and assist the company and its professionals as they communicate with creditors and interested stakeholders.

Finally, a different form of collaboration, external collaboration, is essential to an efficient claims-resolution process. Even though disputed claims can be heavily litigated up to

the highest appellate levels, most claims are ultimately settled, often before any major substantive papers are filed in court.

While it is important to have strong litigators and litigation support available, it is every bit as important to make sure the claims-resolution team includes professionals with substantial experience in negotiating and implementing sensible, cost-efficient settlements.

Conclusion

Achieving an effective and efficient claims-resolution process requires planning and up-front action. Approaching the process with an eye toward collaboration will allow for a successful claims-resolution process, which will limit expense to professionals and allow for debtors to maintain healthy vendor relations after the process is complete. **abi**