

VIEWPOINT

Perception Vs. Reality: Hidden Truths Of The Claims-Agent Sector

By Louis A. Recano and Scott Y. Stuart



Louis A. Recano



Scott Y. Stuart

Chapter 11 is a tough road for almost any debtor these days. The law since the 2005 amendments has presented new and difficult challenges. Issues are complex and, particularly in larger cases, there are layers of professionals who come together to make the case run as smoothly as possible. Of all of the players in a case however (attorneys, accountants, financial advisers and investment bankers to name a few), the one focused on the least, but an important player nonetheless, is the claims agent.

The management of claims outside of the clerk's office began in earnest in the early 1980s during the Intel bankruptcy case. In that case, a computer system was set up on site, at the company, to take in and manage the many thousands of claims in that matter. This in-house (outsourced) solution continued for several years until the Eastern Airlines case in the Southern District of New York. In that case, the clerk's office halted a debtor's self management of claims, marking the beginning of the era of the "claims agent."

Since the late 1980s, the claims-agent sector has morphed into what is today a multi-million dollar industry for the dozen or so companies who compete in that space. Different from professionals retained in bankruptcy cases, however, a claims agent is retained under 28 U.S.C. Section 156 as an outsourced agent of the clerk of the court, an arguably semi-public position, but with no ethical or other public sector accountability.

In a recent article that appeared in this publication (*Work Ramps Up For Claims Agents As Chapter 11 Filings Rise*), selected claims agents were asked about the services they provide. On the surface, the perception given is that this is a straightforward sector, simply providing tech based solutions to quickly and efficiently handle administrative tasks in bankruptcy cases such as identifying creditors, processing their claims and providing noticing services. The reality is quite different, with an array of fees being charged and services being rendered, which arguably should not be a part of services rendered by a claims agent. The question, especially because a claims agent is treated differently from case "professionals," is who is the watchdog in a sector where substantial fees are generated and paid in the ordinary course with no fee application or review process?

Theoretically, it is the clerk's office that should make sure the claims-agent sector is functioning properly and within a defined context. It is unclear whether the U.S. Trustee's Office has any authority over this sector, but after the retention of a claims agent, as an agent of the clerk, the U.S. Trustee effectively takes itself out of the process, leaving no checks and balances over the solutions being provided and at what cost to a debtor's estate. One can only hope that in the void in which the claims agent operates, undetectable inefficiencies and broad latitude in services provided do not cost an estate thousands if not hundreds of thousands of dollars, effectively taking money away from creditors.

In the same article, one claims agent interviewed boasted about how the technology solutions they offer save struggling companies time and money, while also asserting how the sector was "antiquated." This is a fiction on many levels.

The job of a claims agent is supposed to be just that; the intake and management of claims, along with noticing assistance, all of which are the administrative tasks which the clerk of the court would otherwise provide. The sector has morphed far beyond its purely administrative roots. The reality today is that claims agents are part agent of the clerk of the court, part consultant and even part back office to a law firm. Since there is minimal sector oversight, there are no boundaries preventing claims agents from expanding their retention to wherever they can generate fees.

Moreover, the claims management sector has never been "antiquated." Just like technology itself, what is cutting edge and innovative keeps evolving. That being said, the assertion

continued on page 16

VIEWPOINT

continued from page 15

that technology is the end all and be all answer to all claims management issues is also unfounded. Where people power is supplemented and replaced by technology, inefficiencies can -- and will -- occur. With no real oversight of the sector, or general understanding by a client or its professionals of how claims data is collected, reviewed and stored, instead of money being saved, more may be expended by a struggling debtor to support technological inefficiencies. Moreover, since there is no price uniformity or a competitive bidding process in the claims agent sector, it is virtually impossible for a debtor to meaningfully evaluate service proposals, leaving the selection process primarily in the hands of counsel, in what has become more relationship driven than an informed choice selection process.

The perception that the services provided by a claims agent are purely administrative is a great façade. In a sector where recent entrants have taken the industry far afield of basic technological solutions to relieve administrative burdens, it is time to create accountability and oversight where there has been none. This should call into question everything from how a claims agent is selected to its responsibilities acting in a semi-public capacity, as well as the fairness and reasonableness of its fees.

To drive the point home, one need only consider the following: Debtors are checked by creditors. Financial advisers conduct diligence to detect fraud or to determine value. Professionals are scrutinized by judges and fees reviewed and commented on by the U.S. Trustee. Nowhere in this system of checks and balances, however, has the claims agent been brought into the fold, leaving an industry sector that spends untold amounts to market and create relationships to garner lucrative work, ripe for abuse.

In this era of Chapter 11 cases where credit is scant and case outcomes more uncertain than ever before, it is time to bridge the gap between claims agents and all other case parties. If a review of the sector shows it to be a place where, as one claims agent commented, a job well done means "professionals do not have to oversee the administrative element," that is one thing. If, however, the sector has morphed into something it was not intended to be, in effect costing creditors money, then it needs to be looked at in ways that have been ignored for much too long.

(Opinions expressed are those of the authors, not of Dow Jones Newsletters.)

Louis A. Recano is founder of Donlin Recano & Company, a claims, noticing, balloting and distribution agent and provider of information and virtual data room services. He can be reached at lrecano@donlinrecano.com.

Scott Y. Stuart is a partner with Donlin Recano. He can be reached at [sstuart@donlinrecano.com](mailto:ssstuart@donlinrecano.com).

DOWJONES **International Insolvency**

Comprehensive coverage of major distressed companies based outside of North America

For a FREE trial go to
<http://ii.djnewsletters.com>, call
866.291.1800, or email
newsletters.support@dowjones.com

This weekly e-newsletter focuses on global issues, major companies in distress, recent court actions and repayment and liquidation plans. Take advantage of special reports filed from Europe, Asia and Australia. Receive updates on the agency and government policies that directly impact corporate insolvencies.



© Copyright Dow Jones & Company, Inc. All Rights Reserved | www.dj.com | 2S1002