

Viewpoint

One of a series of opinion columns by bankruptcy professionals

The Wave Of The Future In Case Administration?

By Kathryn A. Pamenter

Not long ago, attorneys, paralegals and docket clerks walked, and in some circumstances, ran or took a taxi, to the clerk's office of the bankruptcy court to file pleadings in person before the office closed. Similarly, the regular method of service of pleadings was regular mail, facsimile or overnight delivery. With the introduction of the courts' CM/ECF system came the ability to file pleadings electronically, as well as view and download documents from the court's docket, at any time. Courts are also permitting electronic service of certain pleadings. See, e.g., Superseding General Order M-242: Section II.B. provides that subject to certain excepted documents, "[w]hen service is required to be made on a person who has requested, or is deemed to have requested, electronic notice in accordance with Federal Rule of Bankruptcy Procedure 9036 or the annexed order, the service may be made by serving the 'Notice of Electronic Filing' generated by the System by e-mail, facsimile or hand delivery in the first instance, or by overnight mail if service by e-mail, facsimile or hand delivery is impracticable."

Yet electronic filing and service appear to be just the beginning in online case administration. For example, the U.S. Bankruptcy Court for the District of Delaware approved an electronic proof of claim system in *In re Natural Products Group, LLC, et al.* The debtor's bar date notice encouraged creditors to file a proof of claim on the "electronic claim system" created for the case, although it also advised creditors that completed proof of claim forms could be mailed to the debtor's claims agent. Specifically, the instructions on the electronic claim system stated that it would automatically generate a proof of claim form setting forth the information that the claimant entered during the four-step process. In the first step, claimants had to mark checkboxes acknowledging the bankruptcy court's redaction requirements and the penalty for presenting a fraudulent claim. The second and third steps required the claimant to provide the details of the claim being asserted and afforded the claimant the opportunity to attach any supporting documentation. In step four, the claimant signed the form by inserting his or her full name and checking a box certifying both the accuracy of the information provided as well as the authority of the claimant to file the claim. Upon the electronic submission of the completed proof of claim form, a receipt was automatically generated, and the claimant had the opportunity to click a link to immediately view the claim on the official claims register for the case.

In *In re CyberRebate.com Inc.*, filed in the U.S. Bankruptcy Court for the Eastern District of New York, the court authorized the debtor to electronically administer all aspects of its case. Specifically, CyberRebate.com obtained approval to administer its case online in light of the facts that (1) it conducted its business exclusively online, (2) the company had approximately 130,000 creditors and (3) funds were not available for a

customary "hard copy" claims and solicitation process without exhausting the estate's assets. The debtor's claims agent mailed a postcard to all of the debtor's creditors, advising them of the reorganization website address as well as the deadlines to file a proof of claim and to vote to accept or reject the liquidating plan online through that website. In addition, the postcard notified creditors of the deadline for filing an objection to the disclosure statement and plan, the date of the confirmation hearing and the ability to view and download the debtor's disclosure statement and plan on the website. The postcard was the only "hard copy" mailing sent in the case.

The debtor's website provided detailed instructions for electronically filing a proof of claim form, as well as for voting on the plan online. In fact, parties filing a general unsecured claim could not complete the process without voting to accept or reject the plan or indicating that the claimant declined to vote. Claimants in certain classes had the option of downloading a ballot form and mailing it to the claims agent. About 18,000 creditors filed proofs of claim in the case, and about 12,000 creditors voted to accept or reject the liquidation plan, with an over 90% acceptance rate in number of votes and dollar amount. The debtor's liquidation plan was confirmed, unsecured creditors received a distribution and, as a result of administering the debtor's case electronically, the estate saved hundreds of thousands of dollars in administration costs. While unique in that the filing of proofs of claim and voting on the plan were conducted simultaneously, the *CyberRebate.com* case illustrates the ability of a debtor to administer all aspects of its case online.

The foundation has been set for sophisticated case administrators to offer novel alternatives for managing a client's case electronically. Such options are not limited to a Chapter 11 restructuring, but also may be appropriate in a liquidating trustee case, an assignment for the benefit of creditors or a receivership. Whether conducting online the process for filing proofs of claim or voting on a plan, or affording the opportunity to view and download voluminous pleadings such as a debtor's disclosure statement, plan and related plan documents, electronic case management offers debtors an efficient, cost-effective alternative which courts may now be more willing to approve.

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