

AMERICAN BANKRUPTCY INSTITUTE JOURNAL

The Essential Resource for Today's Busy Insolvency Professional

Beyond the Quill

BY BRADLEY SHARP AND ERIC KURTZMAN

The Past, Present and Future of Technology: 2000, 2020 and 2040



Bradley Sharp
Development
Specialists, Inc.
Los Angeles



Eric Kurtzman
Stretto; Irvine, Calif.

Bradley Sharp is CEO and president of Development Specialists, Inc. in Los Angeles. Eric Kurtzman is CEO of Stretto in Irvine, Calif., and a former corporate restructuring attorney.

A look back to the past two decades reveals volumes about how much the bankruptcy process has changed and what it might look like in the future. In the not-too-distant past, the process was paper-laden and without any technology enablers, walking into a courthouse was the only way to file a pleading, and creditor data was stored in paper files.

Fast-forwarding to the present, the advent and adoption of common technology applications and tools, including cloud-based software solutions, have made the process more efficient and streamlined, avoiding many aspects of manual and redundant labor that lend themselves to process automation. Looking forward, more changes lie on the horizon as the bankruptcy process will be required to grow leaner and more efficient, as well as more dynamic with respect to data processing (whether that be within schedules of assets and liabilities, statements of financial affairs, or claims) and more defensive with respect to safeguarding sensitive data. By harnessing new technologies, bankruptcy can remain an effective way for individuals to get a fresh start, trustees to manage case volumes, and companies to restructure debt obligations and emerge as viable businesses.

While the highly regulated legal industry is notorious for its cautious adoption of technology, and is sometimes resistant to changing established business processes that have “stood the test of time,” today’s integrated technology systems and case-management software that support bankruptcy administration — both corporate and consumer — have made significant strides forward. In looking at the key technological advances over the years and imagining the years to come, bankruptcy technology is continually evolving, responding to and anticipating the needs of practitioners and all stakehold-

ers/participants; but despite this constant evolution, there remains a consistent underlying theme, which is to enable professionals to step past the administrative hurdles and focus on the substantive and strategic aspects of the bankruptcy process, thus delivering successful case outcomes.

A Look Back to Bankruptcy Administration Without Technology

Looking back 20 years ago, the processes involved in bankruptcy administration now seem archaic and obsolete. Prior to the adoption of technology by leading claims agents in the mid-2000s,¹ it was generally considered more efficient to process and track claims by hand and on notepads. Claims status and reporting generally required that professionals printed and faxed reports that became quickly outdated as the case progressed. Information became stale, duplicated and difficult to sort and correlate. It lacked standardization, which made it challenging to manage in a scalable and repeatable way. Professionals wasted time and estates expended countless dollars against these efforts.

The limited availability of broadband internet access prohibited mass access to case information via online systems and greatly impeded the advancement of technology at that time. While locally installed software-based systems (*i.e.*, desktop solutions) existed to fulfill some limited functions, they were not scalable, and their most important role may have been to indicate that the industry recognized a need for better claims-management and notice processes.

To illustrate how this absence of technology played out within the bankruptcy process, let’s

¹ “Debtor Better,” *Los Angeles Bus. J.*, Oct. 3, 2005, available at labusinessjournal.com/news/2005/oct/03/debtor-better (unless otherwise specified, all links in this article were last visited on March 11, 2020).

take a look at one example involving the chapter 11 matter of *Sabratek*² near the turn of the millennium. In this case, a senior legal associate was required to fly back and forth from Los Angeles to Skokie, Ill., to review filing drawers of filed claims. Not only did this result in a significant material expense to the estate, but the claims-reconciliation process largely relied on the associate to “catch issues.” If the associate found a claim filed by David Smith, would he remember that when he saw a similar claim two weeks later when he reached the duplicate claim filed by Yolanda Smith? No systematic way to perform this reconciliation existed. Today, many systems routinely sort, deduplicate and normalize (or data-cleanse) claims information via predominantly automated processes.

Clearly, the lack of technology in the bankruptcy process left much to be desired in 2000. Professionals and their debtors had more difficulty “catching” claims that needed to be scrutinized for objection, and they did not yet allow anyone, anywhere, to perform the claims review. In the 20 years since *Sabratek*, widespread adoption of the internet and deep investment in technology by claims agents has changed all of that. Modern systems ingest each claim, securely tracking and processing its data and availing to all stakeholders (including the claimant, other creditors and administrator or trustee) near real-time visibility into the claim’s progression through the bankruptcy lifecycle.³

Advancing Today’s Bankruptcy Process by Leaps and Bounds

Examining the role of technology in today’s bankruptcy process, it has progressed by leaps and bounds. Today, bankruptcy technology users and providers are shifting away from desktop software to cloud-based solutions. These extend the advantages and scale of web-based technology to enable real-time reporting and access to case information, including claims status, ballot tabulation and distribution efforts. These advancements bring new efficiencies that eliminate delays and reduce administrative costs.

Furthermore, cloud-based systems have expanded to allow new interested parties, such as banks, to utilize the bankruptcy technology. For example, claims agents can now technologically link debtors with banks in a way that eases the burdens on banks and makes them more willing to engage in the bankruptcy arena. Due to the complex nature of bondholder claims, the tabulation of bank and noteholder ballots can give rise to more challenging issues than standard trade claims. Balloting agents have developed elaborate proprietary software to manage these challenges, with features to deduplicate and track master ballots, ensuring that the voting results have integrity. This transparency, enabled by technology, results in interested party banks’ heightened level of confidence to proactively engage with debtors in the bankruptcy process.

Emerging technologies and applications have revolutionized communication among bankruptcy teams and continue to transform the way they collaborate. Twenty years after the advent of Blackberries, a seemingly endless array of smartphone devices offers professionals around-the-clock

access that accelerates decision-making and the progression of bankruptcy cases. Collaboration and file-sharing tools and products such as Zoom and Box have advanced the way teams exchange ideas, communicate, share documents and execute strategies.

As technology progresses across the legal industry, end-to-end case-management solutions provide new ways for bankruptcy professionals to work more productively and apply their higher-order skill sets appropriately against tasks where they bring unique value, while leveraging technology and automation to help administer routine and repeatable assignments, which also minimizes the introduction of human error. These holistic case-management platforms break down silos and handoffs by integrating a variety of functions without requiring users to switch back and forth between disparate software or applications, and enable all involved parties to speak a common language and engage through a consistent interface. For example, professionals now have access to bankruptcy software platforms that allow debtors to upload their schedules of liabilities, allow creditors to directly file their claims, connect the claims to the filed schedules, identify discrepancies or concerns for the professionals to review, allow the professionals to communicate their objections to the claimants, and allow the parties to resolve those objections without court involvement.

While technology has created efficiencies in the process in the last 20 years, there have been unintended consequences. Websites that provide immediate access to court dockets have made it much easier for creditors, particularly in corporate restructuring cases, to follow the proceedings without incurring significant legal fees. Employees of companies in bankruptcy can now spend hours scouring the docket for any pleadings that might impact their future. Competitors and potential buyers now have easier access to information that will likely affect their decisions. As a result, a debtor needs to be much more conscious of pleadings filed, knowing that they will be immediately published to the world.

What’s on the Horizon?

Looking ahead, in the same way that today’s technology largely leverages technologies that were in their nascent stages 20 years ago (e.g., the internet and smartphones), many of the biggest advances in the next 20 years will revolve around new and different applications of today’s emerging technologies (e.g., distributed ledger technology). Future advancements will consist of optimizing much of the foundation that has already been set, including the continued use of advanced analytics to massage data in a way that increasingly allows intuitive decision-making, whether that means highlighting potentially absent information or scouring a petition for “inconsistencies” that merit probing at a meeting of the creditors.

As technology and data-sharing become more integrated into every aspect of the bankruptcy process, data security, safety, encryption and privacy have become — and will continue to be — top concerns for professionals and debtors. Bankruptcy professionals, debtor-in-possession lenders, liquidators and plan proponents, each of whom play different roles in overseeing the operations of failing companies and

² *In re Sabratek Corp.*, Case No. 99-4414 (Bankr. D. Del. Dec. 17, 1999).

³ *In re Z Gallerie LLC*, Case No. 19-10488 (Bankr. D. Del. March 11, 2019).

who might have been less attuned to data security in the past, might unknowingly inherit cesspools of liability in today's world. Companies can face significant fines for lack of compliance surrounding data security and privacy, and the attendant requirements associated with safeguarding personally identifiable information are evolving at the federal and local level on a frequent basis.

Further, companies and their executives can fall prey to ransomware, and in some cases be held "hostage" by nefarious parties who are hacking their systems. To counter these risks, technology service providers now routinely engage rigorous compliance and certification programs to ensure that employees are educated so as to be mindful of how they interact with third parties and that internal systems are resistant to external malefactors. These programs range from hiring professional hackers to perform penetration-testing to using automated software to generate phishing emails. Many of these comprehensive programs conduct third-party audits that continually probe for vulnerabilities and identify areas for additional safeguards.⁴

For bankruptcy matters specifically related to health care, the Health Insurance Portability and Accountability Act (HIPAA) mandates strict guidelines about how patient health care information is collected, stored and shared. These guidelines present unique data-security challenges for health care companies undergoing the corporate bankruptcy process, as patient information could inadvertently become public in the course of the claims and noticing process. As a result, health care debtors and their professionals must be certain that HIPAA-compliant safeguards and noticing strategies are put into place to avoid privacy breaches. Going forward, new technology applications are likely to emerge to support HIPAA compliance throughout the bankruptcy process.

As blockchain and cryptocurrencies become more widely accepted in the coming years and play an increasing role as assets within bankruptcies, new technologies will be required to integrate them into the bankruptcy-administration process. The future might see "bankruptcy dollars" replaced by debtor coins, improving the liquidity of claimholders. This area is still evolving and could take many different paths that might impair or impede widespread adoption, but it still must be on the radar of any proactive participant in the bankruptcy space.

Claims agents have long utilized — and continue to enhance and expand — technology systems that connect filed claims to scheduled liabilities, and that identify claims for potential objection based on duplicity, late filings, incorrect characterization of security or priority, incorrect amounts, etc. Now, leading software providers are introducing and deploying robotic process automation and artificial intelligence applications across the legal and financial industries, which are driving new efficiencies within the bankruptcy industry.⁵

We can see this with emerging applications of predictive analytics that are able to discern with 98 percent accuracy, by reviewing a chapter 7 debtor's schedules and statements, whether the case is likely to be dispositioned as an "asset"

or "no asset" case. Business intelligence and analytics can also provide real-time reporting on the disposition of claims, including the average payout percentage of an unsecured claim based on cases of similar composition (e.g., debt, equity, size of creditor matrix). There are integrated tools and features that project asset valuation, leveraging software applications that pull data from a variety of third-party sources so as to provide comparative valuations of debtors' residences and automobiles.

Conclusion

While technology's progress in the bankruptcy arena has largely been linear in the past two decades, it is entirely possible that new technology breakthroughs will create disruption that will revolutionize how professionals execute cases. The bankruptcy industry, which generally runs on a routine set of rules (although professionals often twist a rule or two to fit each unique case), represents a great opportunity for the continued evolution and adoption of technology-based efficiency systems. Each case, in the years to come, could be seen to exist in an ecosystem in which multiple stakeholders can seamlessly interact and communicate in a streamlined manner that increases transparency and engagement, and expedites the resolution of case dispositions. As filing volumes remain in a relative trough, identifying and implementing these technology enhancements will be a true force multiplier in the years to come when filings inevitably increase. **abi**

Reprinted with permission from the ABI Journal, Vol. XXXIX, No. 4, April 2020.

The American Bankruptcy Institute is a multi-disciplinary, non-partisan organization devoted to bankruptcy issues. ABI has more than 12,000 members, representing all facets of the insolvency field. For more information, visit abi.org.

⁴ Laura Bernheim, "Conquering Human Error with KnowBe4: How the Security Awareness Training Platform Protects Businesses From Vulnerabilities," *Hosting Advice*, April 4, 2018, available at hostingadvice.com/blog/knowbe4-security-awareness-training-platform.

⁵ *In re Z Gallerie LLC*, Case No. 19-10488 (Bankr. D. Del. March 11, 2019).