

The Advent Of Electronic Balloting In Ch. 11



Law360, New York (May 22, 2014, 10:07 AM ET) -- Solicitation — the voting and tabulation of ballots that determines the fate of the debtor’s plan of reorganization — can prove to be one of the most significant milestones in a Chapter 11 case. Traditionally, the corporate restructuring process has relied upon paper-laden methods to drive this process forward. Yet, forward-thinking professionals and technology-minded claims agents are forging new territory by using court-approved electronic balloting procedures for the first time ever.

Marking a significant leap forward in the Chapter 11 solicitation process, the U.S. Bankruptcy Court for the District of Delaware approved electronic balloting procedures in the Pitt Penn Holding Co. Inc. et al. matter. Electronic balloting technology allows creditors to vote instantaneously online rather than via the traditional method of completing and returning paper ballot forms sent through the United States Postal Service or other methods of delivery service (e.g., FedEx).

This step signals a growing shift toward more widespread adoption of electronic offerings within corporate bankruptcy proceedings. Furthermore, it brings with it new benefits and implications for the balloting process within Chapter 11 by providing greater immediacy, efficiency and other benefits for debtors and stakeholders alike. As the timelines within Chapter 11 accelerate, this can greatly assist professionals seeking to expedite the restructuring process and reach consensus among involved parties.

How Electronic Balloting Works

In a typical Chapter 11 case, creditors who are entitled to vote on the plan of reorganization/liquidation do so through a paper-driven process from beginning to end, as determined by the solicitation procedures devised by debtor’s counsel and approved by the bankruptcy court. Generally speaking, the creditor receives a hard-copy ballot and must mail in a completed ballot by a predetermined voting deadline.

For the first time in a Chapter 11 case, the legal and administrative team for the Pitt Penn case streamlined this process with an electronic balloting option so that designated creditors were able to vote online. Creditors received a hard-copy ballot, but also were given the option to vote electronically (with corresponding instructions) and instantaneously, without the costs and potential complications associated with traditional Chapter 11 voting. As a result, 87 percent of the ballots, representing more than 99 percent of the voting shares/dollars, were submitted electronically in the Pitt Penn case.

Designated voters in the Pitt Penn case received a customized paper ballot with their name, voting amount and a ballot code. This code was voter- and ballot-specific, which meant that if creditors were voting in multiple classes, they received a code for each class. The underlying technology platform used in this case required that voters enter their code when completing their ballot(s). That code was then verified against the approved list of voting parties prior to the ballot tabulation.

To provide maximum security and identity verification, the technology platform used for Pitt Penn's electronic balloting required a valid email address and logged the Internet Protocol (IP) address of any users attempting to complete a ballot. These technical requirements prevented malicious or fraudulent ballots and claims. Moreover, it utilized numerous safeguards, including stringent, industry-leading encryption standards, retention and storage practices, and data security.

This technology also makes it possible to track when, from where and how often computers attempt to complete a ballot. Unlike with traditional paper ballots, if the origin of the electronically filed ballot is ever challenged in court, it is possible to verify the IP address of the computer completing the ballot.

The technology also offers a court-admissible certificate of completion with a comprehensive digital audit trail to confirm the validity of voters/claimants. The technology enforces consumer consent, unique signature adoption and signature flow provisions. In short, every step possible is taken to ensure ballots submitted are valid and, in fact, submitted by the proper (and entitled) voting party.

The Impact of Electronic Balloting in Practice

The advent of electronic balloting brings with it significant benefits and implications for the Chapter 11 process, its practitioners and stakeholders. It can offer significant time and cost savings with greater immediacy of voting data, while improving accuracy and eliminating redundancy in the voting and tabulation process. Additionally, for cases where public securities are involved, electronic balloting alleviates the time constraints of the voting process and allows greater voter participation.

QR codes — an enhanced barcode with greater storage capacity and readability than a traditional bar code — are fundamental to electronic balloting. QR codes enable creditors to auto-fill their information in the balloting database when voting, and also have implications for further advancements in electronic balloting.

For instance, assuming it is approved by the bankruptcy court, creditors may eventually be able to use this technology to scan the QR code from the hard-copy ballot using a smartphone, and then submit it

electronically, further streamlining the voting process.

Debtors and their professionals can gain measurable time and cost-savings by using electronic balloting as it bypasses the administrative costs and time delays of data entry. In a traditional Chapter 11 solicitation, the solicitation agent must manually input data from a hard-copy ballot into the voting database. With electronic balloting, the time (and dollars) spent inputting ballot data is shifted from the solicitation agent to the creditor inputting their own data through their electronic ballot. As a result, the administrative costs to the debtor associated with data entry and ballot tabulation are virtually eliminated.

Furthermore, electronic balloting eliminates redundancy. Because creditors enter their own data using an electronic balloting platform, the accuracy of the data is often improved because the individual has entered it rather than a data entry clerk entering it for them.

Electronic balloting also can yield faster access to voting data and results. When processing traditional, hard-copy ballots, a significant amount of time is needed to process, input and compile voting data and results. With electronic voting, the results are instantaneously available, making it possible for debtors and their legal counsel to utilize real-time voting results to guide planning during the final stages of the Chapter 11 process. In addition, in cases where creditors may receive ballots later than planned and/or hoped, they gain the ability to submit their ballot online up until the voting record date, without the delays of mailing them through USPS.

In cases involving creditors who are public securities holders, electronic balloting can ease the time constraints of voting procedures. Within such cases, one must follow a Byzantine process of reaching out to these creditors who remain anonymous through financial institutions.

As a result, the financial institution must tabulate ballots from public securities holders and submit a master ballot representing these votes. As this process can take time, the ability to file the master ballot electronically gives the financial institution additional time to meet the voting deadline.

While solicitation procedures in Chapter 11 may pose a different set of challenges in each case, electronic balloting, as pioneered in the Pitt Penn case, has the potential to yield a variety of measurable and meaningful benefits to debtors and creditors. Furthermore, it promises to streamline the process in new ways as it becomes more widely adopted within Chapter 11. Ultimately, these advances can help debtors and their professionals to more efficiently meet the administrative hurdles and accelerated timelines of today's corporate restructuring process.

—By Norman Pernick, Cole Schotz Meisel Forman & Leonard PA, and Travis Vandell, UpShot Services LLC

Norman Pernick heads the Wilmington, Delaware, office of Cole Schotz and is co-chairman of the firm's bankruptcy and corporate restructuring practice.

Travis Vandell is CEO and co-founder of UpShot Services, a boutique claims and noticing firm that focuses

on the needs of companies in bankruptcy. Vandell has more than 12 years of experience administering Chapter 11 bankruptcies as a corporate restructuring associate and claims agent.

Cole Schotz and UpShot Services together devised the electronic balloting technology described here for the Pitt Penn. case.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

All Content © 2003-2014, Portfolio Media, Inc.

