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Credit Research Foundation

Preparing Your AR Team for the Future CFO

Written by: Mitchell Rose, Billtrust

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Credit Research Foundation (CRF) Announces Executive Changes

At their Spring Forum in San Diego last week, the Credit Research Foundation announced changes to its executive management team. William (Bill) Balduino will be retiring at year end 2022 and Matthew (Matt) Skudera, currently CRF's Chief Content Officer, will be promoted to President and Chief Operating Officer of CRF. Additionally, Michael (Mike) Bevilacqua will be joining the Foundation from PepsiCo and serve in the capacity of Sr Vice President Research and Education. Mr. Bevilacqua will join CRF effective July 6, 2022.

Skudera joined the Foundation in January 2016 as Vice President of Research and has expanded responsibilities as primary liaison with the Foundation's business partners. Prior to his joining CRF, Matt was a Divisional Vice President, Financial Shared Services for Coach Inc., New York, NY. His extensive background across the order-to-cash processes includes roles of increasing responsibility with organizations such as Pfizer, Creditek, Credit2B, and Union Camp Corporation. When asked to comment about his new position at CRF, Matt stated, "I am excited for the opportunity to support the thought leadership that defines the Foundation and the people who participate within it – the focus will continue to be developing programs and opportunities that drive the success of our members."

Bevilacqua comes to CRF from PepsiCo where he held the position of Senior Director of Credit and Finance. Mike has extensive Financial Shared Service experiences and has championed various corporate initiatives traversing people, process and technology. He is a well-known persona within the order-to-cash discipline and has developed broad and significant relationships with his peers as well as the service provider community. Bevilacqua offered, "It's an honor to be part of such a leading edge organization. This is also a great opportunity for me to give back to the discipline that was very good to me throughout my career."

Both gentlemen have extensive experiences with business analytics, process improvement, global governance, shared services management, business process outsourcing and systems implementations, which will be enormously supportive and relevant to the expanding focus of CRF.

Balduino also stated, "The Senior Team of folks at CRF is second to none within the space as Skudera and Bevilacqua are joined with Yesinne Alvarez (Chief Business Development and Strategy Officer), Cheryl Weaverling (Chief Financial Officer), Angela McDonald (Director, Member Services) and Alyssa Ferro (Digital Marketing Coordinator). This team is incredibly dynamic and exceptionally prepared to drive the organization forward – our community is in tremendous hands!"

Pictured (L-R): **Matt Skudera**, Credit Research Foundation, **Bill Balduino**, Credit Research Foundation, **Mike Bevilacqua,** PepsiCo

SUNSHINE & SMILES in SAN DIEGO!

Thank you to everyone that joined us for the March Forum!

The weather was beautiful, the agenda topics on-point, and being together in person made everyone SMILE!

The 2022 March Forum was a huge success!

If you missed us in March, make plans now to join us for the **August Forum & EXPO**!

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Preparing Your AR Team for the Future CFO

By: Mitchell Rose, Senior Vice President & General Manager, Corporate Segment, Billtrust

The US labor market is entering a moment of transition. Data shows that the median age of the US labor force has been rising for several decades as Baby Boomers, now in peak roles, continue to mature. But this cohort of workers is moving towards retirement, meaning there's a growing opportunity for Gen X and Millennials to ascend to higher levels of management.

We're already seeing this transition unfold in the B2B space, where the next generation of buyers are transforming traditional sales processes by bringing their expectations for consumer-like ecommerce experiences to their job roles. As this evolution impacts financial leadership inside organizations, AR teams must adapt to the views and expectations of these next-gen leaders to ensure they are well positioned to contribute to organizational success.

Billtrust recently surveyed 540 C-Suite executives and financial leaders to help AR professionals define the core characteristics of this evolving group of CFO candidates who will ultimately step into business leadership. The study uncovered markedly new perspectives on skills, success, and what the future of the CFO role might look like. For example, future CFOs highlighted the ability to lead AI and Machine Learning projects as a key skill for success. This was certainly a progressive response compared to that of current executives and CFOs, who highlighted traditional skills like budgeting and having the ability to problem solve.

Makeup of the Future CFO

These differences in outlook don't stop there, however. Aspiring CFOs stated that when they ascend into a financial leadership role, they will take a "horizontal management style" wherein they plan to work in more direct collaboration with other business units and beyond the traditional boundaries of the CFO's office. This includes owning the ability to problem solve across business units, something current CFOs rate as significantly unimportant compared to their younger peers.

Meanwhile, emerging CFOs are substantially different in their focus on "envisioning strategy" and developing forecasts as a priority for their office. In fact, while current CFOs have been consistent in labeling risk management as the highest-priority goal, future CFOs listed it at the bottom of their concerns. Instead, they tout being able to mine data and quickly get the right information to the right people so that they retain a competitive edge as critical. Indeed, the study uncovered a widespread belief among aspiring CFOs that better access to their company's data will unlock insights on customers, product evolution, and drive innovation.

Naturally, these attributes of the next generation CFO will drastically impact how they view the AR function within their organization. What this does, is better align AR teams and business leaders on roles and goals. This would certainly be a positive outcome, with past research finding that 75% of AR teams believe their executives view them primarily as task-focused execution teams, while only a quarter of C-level finance executives surveyed see their AR departments as a strategic partner in the business.

So, what can AR teams do to ensure that they are meeting the needs and expectations of these future CFOs, and what's likely to be the evolution of the AR space? Embrace digitization!

Driving Success with a Digital-First AR Team

As we've already hinted at, aspiring CFOs are far more in tune with their industry's inevitable digitization than current leaders. This isn't to say today's CFOs are laggards. After all, the space has undergone an extreme digital transformation under their guidance these past few years. But both generations still differ quite significantly when it comes to their aspirations, priorities, and timelines for technology.

For example, Billtrust found that current CFOs are pushing for more immediate results, highlighting that they're focusing on treasury and cash flow-oriented projects that can be executed within six months. Meanwhile, emerging CFOs showed that they may carry more patience when it comes to their use of technology to generate results, saying that they'd focus on externally-facing projects with timelines of 6 to 24 months, such as integrating infrastructure with customers, external partners, and stakeholders.

This showcases that the future CFO is keenly interested in digital initiatives that integrate infrastructure beyond finance operations and allow for better analysis and reporting. Sixty-one% of this cohort even cited "digitizing invoicing" as an example of the more modernized, digital-first future they aspire to drive. In addition, 45% indicated that "digitized payment flows" would represent a successful digital transformation for them versus just 26% of current leaders who said the same.

Clearly, this suggests a future for AR where they'll continue to push the boundaries of digitization and automation to optimize cash flow. The good news is, this type of modernization is already a proven driver of success and has opened up a whole new world of opportunity for AR professionals in charge of their organizations' financial health.

About the Author

Mitchell Rose is Senior Vice President and General Manager, Corporate Segment at Billtrust, where he has worked with hundreds of businesses to help them automate their order-to-cash process. Before Billtrust, he held senior-level marketing positions with Coca-Cola, Mattel and Warner Lambert. Mitch holds an MBA from Columbia University in Marketing and a BS in Applied Economics from Cornell University.
He can be reached at mrose@billtrust.com.

Dates Matter in Bankruptcy: As Two Recent Decisions Emphasize, Creditors Failing to Comply With Bankruptcy Deadlines Face Dire Consequences

By: Philip J. Gross, Esq., Lowenstein Sandler LLP

When a debtor commences a commercial bankruptcy proceeding, trade creditors, contract counterparties, and other parties with claims or potential claims against the debtor—liquidated or unliquidated—are generally aware of the requirement to file a "proof of claim" by the "bar date" deadline ("Bar Date") established by an order of the bankruptcy court or, in some jurisdictions, local court rules. The Bar Date is usually set early on in Chapter 11 bankruptcy cases, with broad notice provided to creditors of the deadline to file claims for amounts owed as of the bankruptcy petition date. In many cases, a debtor may also seek approval to publish notice of the Bar Date in order to bind unknown creditors that cannot be readily identified in its books and records. This deadline is strictly enforced. Absent extenuating circumstances, creditors cannot pursue any recovery if they miss the Bar Date.

In addition to the Bar Date, creditors, creditors' committees (which trade creditors often serve on in commercial Chapter 11 cases), and others face numerous other, less-well-known – but equally critical – dates and deadlines throughout the life cycle of a bankruptcy proceeding, such as:

- the deadline to object to "first day" and "second day" relief sought by the debtor at the outset of a Chapter 11 case, including interim and final deadlines to object to debtor-in-possession financing and use of cash collateral (assets of the debtor that are subject to its secured lenders' liens);
- the challenge deadline for creditors, creditors' committees, or other parties to bring a lien challenge and assert any other claims against the debtor's secured lenders;
- the response deadline to a debtor's or trustee's objection to a creditor's claim;
- the deadline for creditors and parties in interest to object to a Chapter 11 plan (including any non-consensual third-party release provisions);
- where a Chapter 11 plan contains "consensual" third-party releases, the deadline to opt into or out of the release, as applicable, which often coincides with the plan voting deadline;[1]
- the answer deadline in preference adversary proceedings which, if missed, could lead to entry of a default judgment against the creditor; and
- the administrative claim filing deadline established and set in some bankruptcy cases through a Chapter 11 plan, a stand-alone court order, or both (in cases with multiple deadlines) for creditors to seek payment for goods or services provided to the debtor, or other claims arising, during the course of the bankruptcy case.

Two recent decisions, *Ellis v. Westinghouse Electric Co., LLC* (3d Cir. 2021) by the U.S. Court of Appeals for the Third Circuit and *In re Alto Maipo Delaware LLC* (Bankr. D. Del. Feb. 16, 2022) (Bench Opinion) by the Delaware Bankruptcy Court, demonstrate the serious and often irreparable consequences to creditors, creditors' committees, and other parties that fail to take timely action in compliance with dates and deadlines established by bankruptcy courts. Below, we summarize these two recent cases and emphasize the onerous consequences of failing to comply with bankruptcy dates and deadlines.

Ellis v. Westinghouse Electric Co., LLC – U.S. Court of Appeals for the Third Circuit[2]

As discussed above, a Bar Date fixes the deadline for filing claims against a debtor that arose prior to the bankruptcy filing. However, until recently, no federal appeals court directly addressed the issue of whether a bankruptcy court is authorized to set a deadline for filing administrative expense claims arising *after* a Chapter 11 plan is confirmed but *before* the plan becomes effective (an "Administrative Deadline").

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1 In some Chapter 11 plans, if a creditor or equity holders vote in favor of a plan and/or fails to elect to opt out of the plan release provisions, such party is deemed to have consented to (and be bound by) the releases. Such releases often release not only the debtor but also other identified third-party non-debtors (and often affiliates or related parties of such non-debtors).

2 11 F.4th 221 (3d Cir. 2021).

That changed with the Third Circuit's decision in *Ellis v. Westinghouse Electric*. In that case, Westinghouse Electric and its global affiliates, which operated a global nuclear power plant business, filed for Chapter 11 bankruptcy in the Southern District of New York in March 2017 following costly delays with several nuclear power projects. The bankruptcy court set a general Bar Date, by which creditors had to file proofs of claims for most *pre-petition* claims, of Sept. 1, 2017.

However, the Administrative Deadline for the filing of *post-petition* claims – which, if allowed, must be paid in full under a confirmed Chapter 11 plan – was fixed at 30 days following the effective date of the plan, substantially later than the general pre-petition claims Bar Date. The Chapter 11 plan further provided that creditors with administrative expense claims that failed to file a request for payment of such claims by the Administrative Deadline would be forever barred from asserting such claims against the debtors. The plan was confirmed by the bankruptcy court in March 2018 and became effective on Aug. 1, 2018.

In May 2018, Westinghouse terminated a Vice President of Operations, Timothy Ellis, allegedly on the basis that the department in which Ellis worked was being restructured. However, Ellis, 67 years old at the time, believed the firing was based on age discrimination. In October 2018, Ellis filed suit against reorganized Westinghouse in the U.S. District Court for the Western District of Pennsylvania. Westinghouse argued that the administrative claim arose during Ellis' employment during the debtors' bankruptcy case—and thus was an administrative claim—and moved for summary judgment on the basis that the claim was not timely filed by the Administrative Deadline of Aug. 31, 2018. The Pennsylvania District Court denied the debtors' motion, finding that post-confirmation administrative expenses are not dischargeable under the Bankruptcy Code.

Westinghouse appealed. The Third Circuit reversed the District Court, ruling and cautioning that "[d]ates matter in bankruptcy" and that bankruptcy courts are authorized by the Bankruptcy Code "to set and enforce bar dates for administrative expense claims, including claims arising after confirmation of a plan but before its effective date." Accordingly, because Ellis failed to timely file an administrative claim by the Administrative Deadline (and absent any circumstances warranting relief from the Administrative Deadline, such as failure of the debtors to provide notice), his claim was barred and deemed released and discharged by the Chapter 11 plan.

In re Alto Maipo Delaware LLC – Delaware Bankruptcy Court[3]

On Nov. 17, 2021, Alto Maipo Delaware LLC and Alto Maipo SpA filed Chapter 11 petitions in the U.S. Bankruptcy Court for the District of Delaware. The debtors owned a hydroelectric project in Santiago, Chile that had been under construction since 2013. Prior to their bankruptcy filing, the debtors and their senior secured lenders negotiated the terms of a consensual restructuring to restructure over $2 billion of senior secured debt.

As part of the bankruptcy process, the lenders consented to the use of cash collateral (*i.e.*, the debtors' assets and proceeds in which the lenders held a lien). On Dec. 17, 2021, the bankruptcy court entered a final cash collateral order. As consideration for the use of the lenders' cash collateral, the lenders were granted certain protections under the final cash collateral order, including an agreement from the debtors regarding the validity and enforceability of the lenders' claims and first-priority liens. The debtors also agreed to release all rights to challenge the lenders' claims and liens.

As is typical, the debtors' agreement to the validity and enforceability of the lenders' liens and claims and the releases provided were subject to a 45-day period during which creditors, the creditors' committee (which had not yet been appointed), and other parties were given the right to challenge the validity of the lenders' liens and claims, which would expire on Jan. 31, 2022 (the "<u>Challenge Deadline</u>").[4]

The creditors' committee in *Alto Maipo* was not appointed until Jan. 31, 2022, the day the Challenge Deadline was due to expire. The creditors' committee immediately contacted the debtors and the lenders seeking a consensual extension of the Challenge Deadline until April 2, 2022. The debtors and lenders offered a short-

3 *See In re Alto Maipo Delaware LLC, et al.*, Case No. 21-11507 (KBO), Docket No. 316-1, Transcript of Hearing (Bankr. D. Del. Feb. 16, 2022).

4 Challenge Deadlines are typically important in Chapter 11 cases, especially in cases where a debtor has limited assets available. In such cases, a potential lien challenge and other claims against secured lenders can often be a critical source of recoveries for unsecured creditors. The cost of a lien investigation is prohibitive for an individual unsecured creditor, but creditors' committees appointed in large commercial Chapter 11 bankruptcies will typically pursue such investigation and prosecute any relevant claims (the cost of which is funded by the bankruptcy estate).

er consensual extension of the Challenge Deadline, which the creditors' committee rejected. On Feb. 3, 2022, three days *after* the Challenge Deadline had already expired, the creditors' committee filed a motion asking the court to "extend" the Challenge Deadline for cause shown.

The debtors and lenders opposed the motion, arguing that because the Challenge Deadline had already expired by its own terms on Jan. 31, 2022, the creditors' committee was really asking the bankruptcy court to reconsider and amend the final cash collateral order that established the Challenge Deadline. Such relief could only be granted where extraordinary circumstances are present.

The Delaware Bankruptcy Court agreed and denied (in an oral ruling) the requested extension of the Challenge Deadline. The court noted that it did not matter whether the Challenge Deadline expired 1, 10, or 100 days prior to the relief being sought and that its ruling was "fairly simple" and consistent with those of other courts that refused to extend a deadline after it already had expired.[5] The court further emphasized (a) the importance of the finality of its orders and deadlines, which "must be honored" for a variety of reasons, and (b) that the late appointment of the creditors' committee was not an extenuating circumstance that would qualify for relief from the Challenge Deadline.

Key Takeaways

First, as demonstrated by both the Third Circuit decision in *Ellis* and the Delaware Bankruptcy Court's decision in *Alto Maipo*, dates matter in bankruptcy. Creditors must be extremely vigilant about complying with *all* dates and deadlines in bankruptcy cases.

Among other things, creditors must timely:

- file proofs of claim for unsecured claims and requests for payment of administrative expense claims for goods or services provided during the course of a bankruptcy case (including "20-day" administrative claims under section 503(b)(9) of the Bankruptcy Code);
- file objections and/or responses to relief sought by a debtor;
- respond to objections to their filed claims;
- respond to preference complaints where they are named as defendants; and
- seek extensions of dates and deadlines *before* they lapse.

In *Alto Maipo*, had the request to extend the Challenge Deadline been timely filed prior to the expiration thereof, the Delaware Bankruptcy Court would most likely have granted the requested extension for cause shown. However, this more lenient standard only applies *before* a deadline has expired. The creditors' committee in *Alto Maipo* made a critical mistake by assuming that because the motion to extend the Challenge Deadline was filed only a few days after the deadline, the Delaware Bankruptcy Court would be lenient. However, the court made clear that absent extraordinary circumstances, deadlines fixed in bankruptcy court orders must be honored.

Finally, while creditors should not assume that relief from bankruptcy deadlines will be granted, to the extent extenuating circumstances arise and a deadline is missed, creditors should immediately consult with a bankruptcy attorney to determine whether such circumstances might warrant relief from any missed dates or deadlines.

5 On March 1, 2022, the creditors committee in the *Alto Maipo* case filed a notice of appeal of the Delaware Bankruptcy Court's ruling. That appeal remains pending as of the date of this article.

Innovation in Real Time

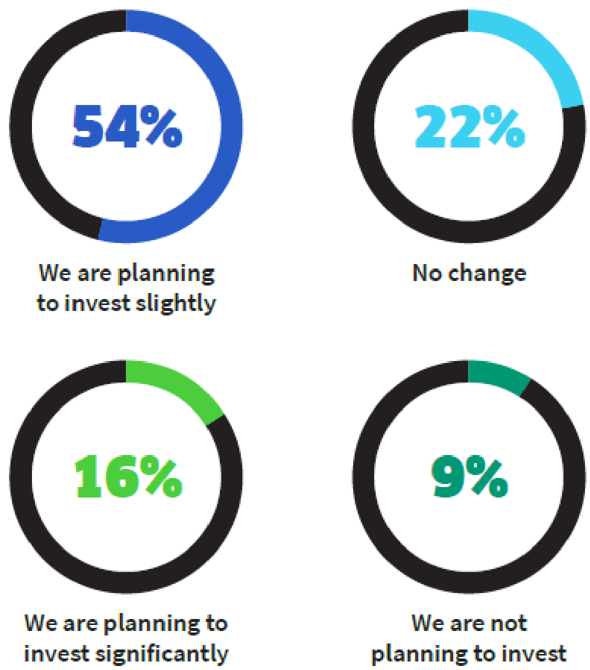
By: Keith Cowart, Receivables Market Owner, FIS

Now more than ever, payments in the business arena are changing. In the past decade, we have seen more change in the payment landscape than over the previous 40 years. Change is being driven by improvements in technology, regulation changes, but most intriguing, change is being driven by consumer expectations to have the same payment experiences professionally that they have personally. With change comes the requirement to invest in the payment infrastructure to recognize the wider benefits. In a recent quantitative survey of 1,500 public and private sector organizations, 70% plan to increase spending over the next 12 months to leverage new technology in payments (Figure 1).

When we hear the term payments, it is natural that we think of paying for something or issuing payments. However, we must look at the broader picture. There are two sides to every transaction. A buyer and a supplier. A payer and a payee. For new technology to become effective and ubiquitous, we need to ensure both sides of a payment transaction are migrating to the latest payment rails and infrastructure. Real-time payments (RTP) are no longer a future wish. It is available now but with only a minority of organizations taking advantage of real-time capabilities. The good news is that the pace of implementation is accelerating. As critical mass is met, the entire global economy will reap the collective benefits of being able to transact in real-time. There are benefits beyond just making and receiving payments faster (the original use case for RTP), which we will cover in more detail later.

Figure 1. Businesses are ready to invest in payments

Which of the following statements best describes your organization's current appetite for investing in new payments innovations?



While adoption is increasing, an interesting caveat is the difference between sectors with B2C at 42% and B2B at 33%. Generally, B2C businesses are more advanced than B2B, but the gap in this case is larger than anticipated. Of those polled, 59% state they are working to have RTP capabilities within the next two years. The opportunities presented by RTP are vast. From improving customer service and strengthening relationships to enhancing competitiveness within a crowded marketplace. When asked about the top use cases for RTP, an overwhelming majority (44%) stated B2B Accounts Receivable (AR). Even though we are talking about payments, which is traditionally Accounts Payable (AP) focused, both the buyer and supplier have a vested interest in RTP.

As promised, some of the benefits of RTP from both the buyer and supplier sides. While some use cases are rather obvious, you will see in the list below that there are some exciting use cases that will change the landscape of how we do business forever.

Use Cases	Buyer Benefits	Supplier Benefits
Faster payments	• Buyers can now execute payments for exactly when they want to pay	• Suppliers know that payment has been received and settled with finality
Customer service	• Buyers know that they have various methods available for payment and can choose to execute payment with precision	• Suppliers have stronger relationships with their customers ensuring they keep them long term
Discount flexibility	• If discounts are available, buyers can choose to take them at a moments notice	• Suppliers can offer more dynamic discount options knowing the payment is instantaneous
Cash forecasting	• Buyers no longer need to consider mail float and ACH delays when forecasting cash and upcoming payments	• Suppliers no longer forecast payments that they have been told have been sent. They have instant visibility to all incoming cash
Straight-through processing	• Remittance details are sent along with the payment which means credit lines are relieved faster as payments are applied immediately	• With the payment arriving with the remittance details, payments are automatically applied without any reassociation, or manual intervention required
Decreased risk		• Every transaction caries a level of risk. However, suppliers have the option to assign less risk to customers paying via RTP and allows for more automated credit approvals
Automated collections	• When invoices are due for payment, suppliers can send a Request for Payment (RFP) to Accounts Payable systems, reducing workload for buyers	• Supplier systems will be able to automatically identify participating customers of RTP which will remove any follow-up tasks for a collector. The system will be able to send the RFP when the invoice is due

The benefits for both buyers and suppliers continue beyond just what is listed above. These are just samples of how RTP will drive changes to the B2B and B2C landscape. My favorite use cases are the combination of straight-through processing and automated collections. In effect, suppliers with customers who are participating in the real-time network can fully automate the credit-to-cash process, freeing up resources to focus on customers who have not yet adopted the capabilities. There are still many nuances that will be worked out over time (i.e., handling of disputes). However, the infrastructure that is being put in place around RTP creates a communication channel supporting the free-flow of information required to resolve disputes quickly.

AP and AR have been locked in a power struggle for centuries. When one side establishes a process to alleviate manual work, delays in processing, reductions in cost, etc., the other side suffers the consequences. For example, AP departments have successfully pushed suppliers to use a portal for submitting invoices and retrieving payment status. I was one of the pioneering AP managers who created a self-built AP portal almost 20 years ago. It reduced the manual work for my team, reduced entry errors, and reduced the number of phone calls we fielded each day. But what that did was force my suppliers to increase their staff for submitting invoices manually into the portal and to log in to check payment status of the invoices.

Fast forward 20 years and almost all AP departments have some form of a portal which has exponentially increased the amount of work on AR departments. AR departments have also attempted their own coup by forcing AP teams to retrieve invoice copies from their own customer portal which has forced more work back on AP teams. Integrations are being enhanced to attempt to link the AP and AR systems for submitting/receiving invoices, but on their own they fall a few steps short of resolving this epic tug of war.

Payment execution and the application of those payments against open invoices is a vital part of creating a harmonious environment. With the introduction of RTP, allowing for payments to be sent and received in real-time, as well as the communication rails carrying the remittance information for applying the payments, a true buyer/supplier network is beginning to emerge. You have probably heard of others stating they have a buyer/supplier network. Often, providers of buyer/supplier networks have the requirement to take possession of your funds to make the inadequate processes work. Why should you have to give up your funds? The benefits of having integrated payables and receivables solutions with various payment methods (allowing customer flexibility), including RTP, support organizations moving out of this power struggle and into a symbiotic relationship. Invoices can be netted between buyers and suppliers, preventing the need for money to change hands, only to send it right back. Buyers will have visibility to a larger pool of suppliers reducing supply chain constraints. Suppliers will have visibility to additional buyers helping to increase revenue. Over time, benefits that we cannot even dream about right now will become a real possibility.

About the Author

Keith Cowart is Receivables Market Owner in FIS' Corporate Liquidity - Receivables group, which features the award-winning Credit-to-Cash product, GETPAID and Integrated Receivables. He has over 20 years of professional experience in various accounting and finance leadership roles including Accounts Payable, G/L Accounting, as well as Credit and Collections in large global companies with shared service centers. Keith's focus has always been in continuous improvement and leveraging technology to automate processes to achieve extraordinary results. Keith holds a Bachelor of Business Administration degree from Piedmont College and a Master of Business Administration degree in Management from Georgia State University.

Recent Legislative Developments in Business Bankruptcy: The "Texas Two-Step" and the Nondebtor Release Prohibition Act of 2021

By: George P. Angelich, Beth M. Brownstein, Brett D. Goodman, and Laura M. Dripps, ArentFox Schiff LLP

Public backlash over the use of both longstanding and novel restructuring strategies in Chapter 11 cases affecting victims of the opioid crisis (*Purdue Pharma*), sexual abuse (*USA Gymnastics* and *Boy Scouts of America*) and talc-based products (*LTL Management)*, among others, has led to recent proposed legislation focused on curtailing perceived abuses of the bankruptcy system. On July 28, 2021, Senators Elizabeth Warren (D-MA), Richard Blumenthal (D-NH) and Dick Durbin (D-IL) introduced S. 2497, the Nondebtor Release Prohibition Act of 2021 (the "***NRPA***") in Congress.[1] If passed, the NRPA would amend the Bankruptcy Code[2] to significantly restrict the ability of courts to approve non-debtor third-party releases and related injunctions – an issue that courts have to date attempted to resolve by judicial decision, with divergent results.[3] The NRPA would also limit use of the "Texas Two-Step," a restructuring strategy whereby corporations separate their assets from liabilities before bankruptcy using a unique form of divisional merger available under Texas law.[4] The recent bankruptcy court decision in *LTL Management* finding the cases were properly filed after utilization of the Texas Two-Step to address mass tort liability will only magnify this portion of the legislation and the pressure on Congress to limit this technique.

The following is an overview of issues surrounding the use of third-party releases and the Texas Two-Step, the provisions of the NRPA aimed at addressing these restructuring tools, and the ongoing debate surrounding this proposed legislation.

Third-Party Releases

In Chapter 11 reorganizations, debtors commonly propose a reorganization plan in which the debtor (or a new entity) makes distributions to creditors in exchange for a release from pre-bankruptcy liabilities and an injunction barring creditors from asserting any released claims outside of the bankruptcy proceedings. Unlike *debtor* releases, third-party releases prevent creditors from asserting their claims (via litigation or otherwise) against *non-debtors*, or individuals or entities that have not themselves filed for bankruptcy. The use of third-party releases and injunctions has become prevalent in Chapter 11 cases and is a valuable incentive offered to obtain funding or other financial accommodations from non-debtors concerned about their own liability relating to the debtor(s). While the inclusion of third-party releases is often contentious and heavily negotiated, they are almost always characterized as necessary to consummate a complex restructuring.

Third-party releases may be consensual or nonconsensual. Consensual releases are typically permitted by courts, although courts sometimes differ as to whether consent is required to be affirmative or can be implied from the failure to vote on a plan or "opt-out" of such releases.[5]

The Federal Circuit courts, however, remain split over the use of nonconsensual third-party releases. The majority of Circuits have held that nonconsensual releases are appropriate in some circumstances,[6] although these

1 *See* Congress.Gov, https://www.congress.gov/bill/117th-congress/senate-bill/2497/all-info

2 11 U.S.C. § 101, *et seq.*

3 On November 3, 2021, the NRPA was passed out of the House Judiciary Committee by a vote of 23-17. Neither the House of Representatives nor the Senate have conducted a full vote on the bill. See Congress.Gov, footnote 1, *supra*. *See also* https://www.congress.gov/bill/117th-congress/house-bill/4777 However, congressional action within the next months is highly possible.

4 *See* S. 2497, 117th CONGRESS (July 28, 2021), Sec. 4.

5 *See In re Indianapolis Downs, LLC.*, 486 B.R. 286, 306 (Bankr. D. Del. 2013)(deeming opt-out provision sufficient to characterize release as consensual); *In re DBSD N. Am., Inc.*, 419 B.R. 179, 219 (Bankr. S.D.N.Y. 2009), partially reversed on other grounds 627 F.3d 496 (2d Cir. 2010)(holding that release was consensual for creditors that did not opt out or vote against plan confirmation); *In re Washington Mut., Inc.*, 442 B.R. 314, 355 (Bankr. D. Del. 2011)("Failing to return a ballot is not a sufficient manifestation of consent to a third party release"); *In re Chassix Holdings, Inc.*, 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015)(approving the use of an opt-in form while deeming opt-out releases to be nonconsensual); *In re SunEdison, Inc.*, 576 B.R. 453, 461 (Bankr. S.D.N.Y. 2017)(accord); *In re Emerge Energy Servs. LP,* No. 19-11563 (KBO), 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019)(deeming opt-out releases to be nonconsensual).

6 *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005)(citing cases); *Monarch Life Ins. Co. v. Ropes & Gray*, 65 F.3d 973, 985 (1st Cir. 1995); *In re Millennium Lab Holdings II, LLC.*, 945 F.3d 126, 133 (3d Cir. 2019); *Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 350 (4th Cir. 2014); *In re Dow Corning Corp.*, 280 F.3d 648, 656 (6th Cir. 2002); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1076-77 (11th Cir. 2015).

courts often note that the use of nonconsensual releases should be limited to "rare" or "extraordinary" cases.[7] On the other hand, the Fifth, Ninth[8] and Tenth Circuits have held that non-debtor releases are prohibited by the Bankruptcy Code, except in asbestos cases where channeling injunctions are expressly permitted by section 524(g) of the Bankruptcy Code.[9] In light of the utility of third-party releases in structuring and consummating a corporate reorganization, many companies have looked to jurisdictions that favor third-party releases when seeking bankruptcy protection.[10]

Public controversy over third-party releases has come to the forefront in light of a number of high-profile bankruptcy cases such as the *In re: Purdue Pharma L.P., et al.* Chapter 11 cases ("***Purdue Pharma***"). In September 2019, amid ballooning litigation from individuals, states, municipalities and tribes relating to Purdue Pharma's manufacture and sale of OxyContin at a time the company arguably knew it to be unsafe and medically unnecessary, Purdue Pharma filed for bankruptcy in White Plains, New York.[11] In 2021, Purdue Pharma submitted a proposed plan of reorganization that triggered outrage from states and victims of the opioid crisis for incorporating a nonconsensual third-party release of non-debtors, including the Sackler family, owners of Purdue Pharma, in exchange for a $4.5 billion plan contribution to plaintiffs. Bankruptcy Judge Drain approved the plan and its releases (after first narrowing their scope) which triggered public backlash over the Sackler family and other non-debtors' immunity to future opioid related liability.

Although over 95% of voting creditors supported the negotiated plan, the plan attracted controversy and scrutiny from government regulators who appealed confirmation of the plan.[12] On appeal, the district court acknowledged the bankruptcy court's concerns that, were the negotiated plan not confirmed, creditors would have no other means of recovering funds given the potential difficulty of collecting assets transferred from Purdue Pharma.[13] However, the district court reversed the bankruptcy court's decision and concluded that the Bankruptcy Code does not permit nonconsensual releases of non-debtor third parties (outside of the asbestos context).[14] Additionally, by releasing claims against non-debtor third parties, the bankruptcy court had exceeded its constitutional authority in light of the Supreme Court's decision in *Stern v. Marshall*, 564 U.S. 462, (2011).[15] The decision has been appealed to the Second Circuit[16], and the Sackler family has since proposed to increase its plan contribution to at least $5.5 billion.[17] It is possible that a settlement is reached with the Sackler family and the Second Circuit does not issue a decision in the *Purdue Pharma* case.

In another recent decision, on January 13, 2022, in the *In re: Retail Group, Inc. (Ascena Retail Group, Inc.), et al.* Chapter 11 cases ("***Ascena Retail***"), a Virginia district court similarly overturned confirmation of a Chapter 11 plan on the grounds that the bankruptcy court exceeded its authority in approving an overbroad third-party release. On appeal of the plan, the district court noted that Ascena Retail had only been required to provide opt-out notices to a small percentage of creditors subject to a wide-ranging third-party release.[18] Only 596 of the approximately 300,000 noticed releasing parties returned opt-out forms to the solicitation agent.[19] The district court found that this percentage was low enough to determine that notice of the opt-out provision was

7 The bankruptcy court in Purdue Pharma, discussed *infra*. cited *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005) for the proposition that non-debtor releases are permissible in the Second Circuit. *In re Purdue Pharma L.P.*, 633 B.R. 53, 100 (Bankr. S.D.N.Y. 2021). The district court reversed this aspect of the bankruptcy court's holding, finding that the Second Circuit had not held that non-debtor releases are permissible. *See In re Purdue Pharma, L.P.*, No. 21 CV 7532 (CM), 2021 WL 5979108, at *57 (S.D.N.Y. Dec. 16, 2021).

8 The Ninth Circuit subsequently approved of a limited nonconsensual release in *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1084 (9th Cir. 2020), which primarily applied to acts taken during the chapter 11 proceedings.

9 *Metromedia, supra* at 141, citing *Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401–02, 1402 n. 6 (9th Cir.1995); *Landsing Diversified Props.-II v. First Nat'l Bank and Trust Co. of Tulsa (In re W. Real Estate Fund, Inc.)*, 922 F.2d 592, 600–02 (10th Cir.1990); *see also In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009).

10 The flexibility of entities to select among various jurisdiction for the commencement of their chapter 11 cases is the subject of separate proposed legislation before Congress. *See* S.2827 - Bankruptcy Venue Reform Act of 2021, 117th CONGRESS (September 23, 2021); H.R.4193 - Bankruptcy Venue Reform Act of 2021, 117th CONGRESS (June 28, 2021).

11 SDNY Case No. Case No. 19-23649-RDD.

12 *In re Purdue Pharma, L.P.*, 2021 WL 5979108, *32-38 (S.D.N.Y. Dec. 16, 2021).

13 *Id*. at *33.

14 *Id*. at *38.

15 *Id*. at *40-41.

16 *See* U.S. Court of Appeals for the Second Circuit, Case Nos. [22-110, 22-113, 22-115, 22-116, 22-117, 22-119, 22-121, 22-203].

17 *See In re Purdue Pharma L.P. et al.*, Bankr. S.D.N.Y. Case No. 19-23649-RDD, Mediator's Third Interim Report [ECF No. 4369], ¶ 7 (filed Feb. 18, 2022).

18 *JOEL PATTERSON, et al., Appellants, v. MAHWAH BERGEN RETAIL GROUP, INC. Appellee. Additional Party Names: Michaella Corp., United States Tr.*, 2022 WL 135398, at *23 (E.D. Va. Jan. 13, 2022).

19 *Id*.

insufficient, and that the third-party releases in the plan had therefore been nonconsensual.[20] In its review of Fourth Circuit precedent holding that nonconsensual third-party releases are justified in some circumstances, the district court determined that the Ascena Retail case did not present the unique circumstances in which nonconsensual releases were justified.[21] The district court additionally found that the bankruptcy court had exceeded its constitutional authority in approving the releases of claims against third parties.[22]

Public scrutiny over the use and breath of third-party releases in notable bankruptcy proceedings has led to various proposed legislation,[23] including most recently the NRPA. The NRPA in its current form would establish a uniform statutory rule for national application thereby resolving conflicting decisions across federal circuits.

If adopted, the current version of the NRPA would:

- Prohibit a U.S. bankruptcy court from confirming a Chapter 11 plan containing nonconsensual third-party releases and injunctions.[24]
- Limit consensual third-party releases and injunctions to plans where creditors give express consent to the terms of the release in writing, which may only be given "after clear and conspicuous notice to such entity of the proposed disposition in language appropriate for the typical holder of such claim or cause of action;" and ***cannot*** be given by voting in favor of a Chapter 11 plan, or failing to "opt out" of a third-party release.[25]
- Limit the duration of injunctions in Chapter 11 cases that protect non-debtors to within 90 days of the order for relief.[26]
- Expedite appeals of stays or injunctions barring creditors from proceeding against non-debtors so that such appeals are heard by the U.S. Court of Appeals, without intermediate district court review.[27]
- Limit the duration of stays pending appeal to 90 days after issuance by the bankruptcy court or district court.[28]

Debate among proponents, critics, scholars and practitioners has swirled in the face of proposed legislation that would almost completely prohibit the use of third-party releases. Proponents of the NRPA fundamentally argue that non-debtors should not be entitled to the benefits of bankruptcy releases limiting or extinguishing their liability when they have not filed for bankruptcy themselves. In their view, the NRPA would prevent bad actors from taking advantage of a perceived loophole in the Bankruptcy Code to evade personal accountability and liability for their actions. Proponents likewise argue that by eliminating nonconsensual non-debtor releases private claimants and the government can decide how to handle and pursue their claims against non-debtors.

Critics, on the other hand, argue that the NRPA is too far-reaching as the prohibitions would apply broadly to all Chapter 11 cases and are not limited to the bad actors in mass tort cases that the legislators and public are focused on. These opponents argue that nonconsensual third-party releases are, and should remain, highly scrutinized by the courts in order to prevent overreaching, but the court's discretion should not be eliminated entirely as all parties (including in certain cases mass tort victims) may be better off when nonconsensual releases are given. If enacted, defenders of third-party releases argue that non-debtors would be less inclined to fund Chapter 11 cases resulting in diminished recoveries to creditors that will now be embroiled in the uncertainty and cost of non-bankruptcy litigation; a result antithetical to the Chapter 11 aims of maximizing value through a speedy process that ensures similar treatment among creditors.

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20 *Id*.
21 *Id*. at *24-25.
22 *Id*. at *25-26.
23 *See e.g.* H.R. 2096 - Stop shielding Assets from Corporate Known Liability by Eliminating non-debtor Releases (SACKLER) Act, 117th CONGRESS (March 29, 2021). The SACKLER Act was introduced by Rep. Carolyn Maloney (D – NY) as a precursor to the NRPA.
24 *See* S. 2497, 117th CONGRESS (July 28, 2021), Sec. 2(a).
25 *Id*., Sec. 2(b)(5).
26 *Id*., Sec. 2(c).
27 *Id*. Sec. 3.
28 *Id*.

The Texas Two-Step

As discussed above, the NRPA targets another scrutinized reorganization strategy by eliminating the Texas Two-Step, a tool which takes advantage of a Texas law allowing companies to assign valuable assets to non-debtors before discharging liabilities in bankruptcy.[29] The Texas Two-Step has recently been used in high-profile cases including *LTL Management LLC, DBMP LLC, Bestwall, LLC,* and *Aldrich Pump LLC*.[30]

In step one of the two-step process, a corporation will undertake a divisional merger under Texas law, separating into two separate entities.[31] The company will then assign liabilities to one post-merger entity, or "BadCo," while leaving valuable assets in "GoodCo," which serves as a post-operating entity.[32] In step two, the BadCo entity will file for bankruptcy with nominal assets, while leaving GoodCo to continue operations free of major liabilities.[33]

In October 2021, Johnson & Johnson, facing more than 38,000 ovarian cancer and mesothelioma claims, effectuated a Texas Two-Step transaction by spinning off its asbestos liabilities into a new subsidiary, LTL Management LLC, and filing it for Chapter 11 protection in the Western District of North Carolina.

A majority of Texas Two-Step bankruptcies have been filed in the Fourth Circuit (specifically the Western District of North Carolina), a jurisdiction where controlling precedent makes it difficult for courts to dismiss a BadCo bankruptcy case as a bad faith filing. The *LTL Management* cases were however subsequently transferred to District of New Jersey (within the Third Circuit).[34] On February 25, 2022, the New Jersey Bankruptcy Court denied a motion by talc claimants to dismiss the *LTL Management* cases as bad faith filings.[35] The bankruptcy court held that the *LTL Management* cases were properly filed to address mass tort liability, after finding that addressing "financially draining mass tort exposure through a bankruptcy is wholly consistent with the aims of the Bankruptcy Code."[36]

As with third-party releases, the Texas Two-Step transactions have triggered backlash among the public and legislators because of the perception that the strategy involves manipulation by insiders to isolate and avoid significant liabilities. As currently proposed, the NRPA would amend the Bankruptcy Code to allow a party in interest to seek dismissal of the Chapter 11 case if a divisional merger separated the debtor's assets from liabilities in the ten years before the petition date.[37]

Proponents of the NRPA argue that the only conceivable purpose of the Texas Two-Step is to allow a previously solvent company to avoid litigating in court, and results in denying personal injury claimants the opportunity to prosecute their claims and be heard. Opponents of the legislation, however, argue that a complete ban is unwarranted. Instead, they contend that bankruptcy courts should have deference in determining whether a case was filed in bad faith, and certain divisional mergers that are followed by bankruptcies can be addressed through fraudulent transfer law.

Conclusion

It remains to be seen whether the NRPA will be passed in its current form, or whether some middle ground can be reached permitting courts to scrutinize whether a nonconsensual third-party release is appropriate or

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29 For related debate in the House Judiciary Committee, see Written Testimony of Douglas G. Baird, Adam Levitin et al., Subcommittee on Antitrust, Commercial, and Administrative Law, "Oversight of the Bankruptcy Code, Part 1: Confronting Abuses of the Chapter 11 System," (July 28, 2021) https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4666

30 *See LTL Management LLC*, Bankr. D. N.J. Case No. 21-30589-MBK originally Bankr. W.D.N.C. Case No. 21-30589-JCW (Filed Oct 14 2021); *Aldrich Pump LLC*, Bankr. W.D.N.C. Case No. 20-30608-JCW (Filed June 18, 2020); *DBMP LLC*, Bankr. W.D.N.C. Case No. 20-30080-JCW (Filed Jan 23 2020); *Bestwall, LLC*, Bankr. W.D.N.C. Case No. 17-31795-LTB (Filed Nov 2, 2017).

31 Hon. Judith Klaswick Fitzgerald (Ret.), Written Testimony Before the Senate Committee on the Judiciary, Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights, "Abusing Chapter 11: Corporate Efforts to Side-Step Accountability Through Bankruptcy" (February 8, 2022) https://www.judiciary.senate.gov/imo/media/doc/Fitzgerald%20Testimony.pdf at 5.

32 *Id*.

33 *Id*.

34 Vince Sullivan, Senators Hear Possible Solutions To 'Texas Two-Step' Issues, LAW360 (Feb 8 2022), https://www.law360.com/bankruptcy/articles/1462698/senators-hear-possible-solutions-to-texas-two-step-issues?nl_pk=17b2524d-a8dd-47a8-aa9b-81e788cefcd4&utm_source=newsletter&utm_medium=email&utm_campaign=bankruptcy&read_more=1

35 Bankr. D. N.J. Case No. 21-30589 (MBK), ECF No. 1572 (filed February 2, 2022).

36 *Id*. at 17

37 *See* S. 2497, 117th CONGRESS (July 28, 2021), Sec. 4.

whether a bankruptcy following a divisional merger was filed in bad faith. The recent decision in *LTL Management* finding the use of the Texas Two-Step to be proper could intensify the ongoing debate over the NRPA and put additional pressure on legislators to pass (or oppose) this reform. What is certain is that any change in these areas of the law will have significant ramifications on the ability to manage claims and distributions and facilitate Chapter 11 restructurings.

About the Authors

ArentFox Schiff's Bankruptcy & Financial Restructuring group focuses on the representation of Creditor Committees and creditor rights. If you have any questions, please contact George Angelich (George.Angelich@afslaw.com), Beth M. Brownstein (beth.brownstein@afslaw.com), Brett Goodman (Brett.Goodman@afslaw.com) and Lauren M. Dripps (Laura.Dripps@afslaw.com).




Same Day ACH Now Available for Up to $1 Million Per Payment

By: Robert Unger: Senior Director Product Management and Strategic Initiatives, Nacha

Same Day ACH has come a long way in just over five years. This faster payment method leverages the power of the modern ACH Network and its ability to reach accounts at any U.S. financial institution. This year and last have brought important enhancements making Same Day ACH even more useful for the Credit Research Foundation community of businesses.

On March 18, 2022, the per payment limit for Same Day ACH climbed to $1 million. That's a ten-fold increase from the previous $100,000 limit and comes just two years after the maximum was raised from $25,000. The $1 million limit is going to help meet increasing demand, particularly on the B2B front, as organizations can now use ACH for most all of their faster payment needs. Nacha expects to see increased use of Same Day ACH for funding of payroll and tax payments in addition to vendor/supplier payments.

The higher limit follows the expansion of hours in March 2021, giving companies two additional hours to initiate Same Day ACH payments. Transactions now settle four times per day on the ACH Network, making Same Day ACH a safe, efficient and economical way to handle a wide range of payments.

Nacha advises CRF members to follow up with their bank and payment vendor partners to confirm specific requirements. Meanwhile, CRF members should inform their customers about the new Same Day ACH features which provide additional benefits compared to wire payments, including the ability to send standardized remittance information.

You can learn more at Nacha's Same Day ACH Resource Center: Nacha.org/sda.

About the Author

Robert Unger, AAP, is the Senior Director, Product Management and Strategic Initiatives with Nacha. Mr. Unger leads business engagement for procure-to-pay, order-to-cash and related payment functions, focusing on payment operations and strategy, as well as Automated Clearing House (ACH) online banking/bill pay and B2B initiatives.

Prior to joining Nacha, Mr. Unger served as Director of Education with Research and Management Systems, a technology firm providing software and management solutions for research, education and e-commerce in government and higher education.

How Intelligent Data Can Transform Your Accounts Receivable

By: Nicole Dwyer and Sarah-Jane Martin, Quadient

Advances in technology and the changing nature of the modern workplace are forcing companies to rapidly adapt how they approach processes like accounts receivable.

An increase of remote and hybrid workers has led companies to embrace agile business principles, as well as things like digitization and cloud-based solutions. As automation makes operations like data entry and customer communication easier, it is freeing finance leaders to focus more on subjects like analytics, taking a granular look at information to inform decisions that not only keep them afloat but ahead of their competitors.

For Stephen Tracy, Director of Finance for CHG Healthcare in Herriman, Utah, that meant looking for something beyond a "one-size-fits-all" type solution.

As a company in the healthcare industry, CHG was hit hard when the pandemic started. The healthcare industry was under pressure, as was the world of travel. This presented them with challenges from multiple directions. Much of their money is made in specialty surgeries, which were put on hold while hospitals managed the influx of patients due to COVID-19. At the same time, the business had to increase its nursing staffing. This forced them to reshape their business model, and they needed reporting that could keep up with that.

"We were looking for a partner that could really make something for us that would help us keep afloat, stay up to date on everything, track everything really well, and be able to adjust on the fly as needed," Tracy said.

He also found that his team needed to be able to identify problems they were experiencing at a micro-level. If a hospital was not paying them, they needed to be able to pinpoint the reason why. They wanted the data to help determine what they could do better in terms of the upfront process to avoid complications in the future.

CHG worked with a leading Fintech provider to provide the business intelligence they required.

"We were able to get way more granular," Tracy said. "We were able to see what issues were being caused, what teams to contact and make improvements, and we were also able to see where our aging was better than ever before."

This focus on data is representative of a growing trend in finance. As companies attempt to become more strategic and efficient in their processes, it is necessary to have access to a broad array of information, with the ability to customize reports quickly and inexpensively.

Organizations are also increasingly adopting agile business principles, using things like sprint planning meetings, which allow them to regularly assess performance, adjust goals and make changes to process rapidly.

The ability to take an intimate look at data helps identify inefficiencies and bottlenecks in the process, and then make concrete plans on how to address those issues. However, with companies measuring success through unique key performance indicators, most are finding that they need solutions that grant them customized reporting capabilities that can be obtained without long turnaround times or added expense.

The market has responded to these needs by creating solutions that offer the ability to drill down into information, segment it, and then create unique reports tailored to specific business needs.

However, this broad access to data has required an adjustment on the part of end-users.

“You have to think differently,” Tracy said. “You have to be a little more technical when determining what you are really trying to track. What are you really trying to figure out and understand? You have to figure out what information is in what data table, and then get it down to what you want the report to show.”

He found that the easiest way to get his arms around the technology was to run an extremely broad report, and then reduce columns until it contained only the exact information that he required. To learn the system better, he also sought out account managers who were willing to walk him through the process of creating custom reports, so that he and his team were prepared to hit the ground running after the software was implemented.

Many of the systems which provide this detailed level of reporting are comprehensive automation solutions, which integrate with things like existing CRM and accounting software. This often includes features like a customer self-service portal to make payments. That means that, in addition to employee training, it may be necessary to reach out to the customer base and help them adjust to the new method of making payments and receiving communications.

While these upfront adjustments require an investment of time and capital, the long-term benefits suggest that the ROI far outweighs any initial cost. Through the use of an automated solution for processes like AR, customers have been able to decrease delinquent payments, using analytics to strategically plan their collections activity, streamline the payment process and improve customer experience, as well as use advanced reporting to track KPIs that can identify areas in need of improvement.

Taken altogether, the process that CHG engaged in functions as a good blueprint for other businesses who find themselves looking to adopt a new solution for managing accounts receivable. Identifying the problems in their current process and making a clear list of the features allowed them to find the best possible software for their needs. Just as importantly, they ensured that their new provider was committed to helping install the system and get it running successfully after the sale. All of this allowed them to adapt to a rapidly changing business environment and keep their organization successful.

About the Authors

Nicole Dwyer is SVP Portfolio Strategy at Quadient bringing more than 20 years’ experience in accounts payable and receivable technology to ensure Quadient continues to meet the needs of its customers. Having spent her entire career in commercial payments, Nicole understands high- and low-value payment systems, the complexities of how businesses pay and get paid, and has collaborated with distributed teams spanning the globe. She is a graduate of Worcester Polytechnic Institute. Residing in New Hampshire with her husband, daughter, and son, they spend their time outdoors and creating new adventures.

Sara-Jayne Martin is a Finance Professional specializing in the areas of Credit Management, Payment Processing, Collections and Accounts Receivable, possessing over 20 years’ experience in the field managing large global teams with a strong focus on improving efficiency within the Order to Cash cycle. Hailed as an industry expert in the field, Sarah-Jayne makes active appearances in the space, frequently featuring on thought-leading panels and discussions.

Account Placement Thru the COVID Lens

An Analytical Report on the Placement of Delinquent Accounts with Certified, Third-Party Commercial Collection Agencies in 2020-2021

Commercial Collection Agencies of America is often called upon to offer industry trend analysis to credit practitioners – fielding inquiries from credit analysts, managers, directors and C-suite executives, not to mention sales teams seeking information on the effect of bad debt. The Association supplies detailed data so today's credit executive can gain a focused insight to aid when executing tasks such as budgeting analysis, DSO, policy and procedure compliance, and of course receivable performance and cash collection.

Amongst the requirements to maintain certification promulgated by an Independent Standards Board, is the submission of account placement data on a quarterly basis by agency members of Commercial Collection Agencies of America. In tandem with the desire to aid the credit community is the ability for each agency to use the comprehensive reports for internal analysis and benchmarking.

The overarching message when reviewing recovery statistics supports the tenet that the probability of full collection on a delinquent account drops drastically in accordance with the length of the delinquency and that the prompt placement of accounts with third parties remedies those decreases. Sounds reasonable during "normal" times, but how much did that matter when the world came to a screeching halt in March 2020? How were agencies going to assist credit practitioners traverse the immediate changes that the business community was going through? Looking through the COVID lens, how were account placements affected?

For the purposes of this placement study, the Association reviewed all quarters of 2021 and all quarters of 2020, analyzing the following indices:

- √ The number of accounts placed for collection
- √ The dollar amount of accounts placed for collection
- √ The resulting average-sized account

The three (3) sections of this report are:

1. A comparison of quarters in 2021 to the same quarters in 2020
2. A comparison and commentary of the movement between quarters within the same year for 2021 and 2020
3. Summary and Conclusion

NUMBER OF ACCOUNTS PLACED FOR COLLECTION

The number of accounts placed for collection in 2021 was compared to the number of accounts placed for collection in 2020.

PERIOD	INCREASE (DECREASE)
1Q2020 to 1Q 2021	6.85%
2Q2020 to 2Q 2021	19.67%
3Q2020 to 3Q 2021	11.32%
4Q2020 to 4Q 2021	12.99%

FIRST QUARTER

The *number of accounts placed for collection* in the first quarter of 2021 increased 6.85% when compared to the first quarter of 2020.

<u>SECOND QUARTER</u>
The *number of accounts placed for collection* in the second quarter of 2021, increased 19.67% when compared to the second quarter of 2020.

<u>THIRD QUARTER</u>
The *number of accounts placed for collection* in the third quarter of 2021 increased 11.32% when compared to the third quarter of 2020.

<u>FOURTH QUARTER</u>
The *number of accounts placed for collection* in the fourth quarter of 2021 increased 12.99%, when compared to the fourth quarter of 2020.

DOLLAR AMOUNT OF ACCOUNTS PLACED FOR COLLECTION

The Association also measured the *dollar amount of accounts placed for collection*. It compared 2021 to 2020, and the results, by quarter, were as follows:

PERIOD	INCREASE (DECREASE)
1Q2020 to 1Q 2021	3.29%
2Q2020 to 2Q 2021	8.27%
3Q2020 to 3Q 2021	(5.83%)
4Q2020 to 4Q 2021	17.70%

<u>FIRST QUARTER</u>
The *dollar amount of accounts placed for collection* in the first quarter of 2021 increased 3.29% when compared to the first quarter of 2020.

<u>SECOND QUARTER</u>
The *dollar amount of accounts placed for collection* in the second quarter of 2021, increased 8.27% when compared to the second quarter of 2020.

<u>THIRD QUARTER</u>
The *dollar amount of accounts placed for collection* in the third quarter of 2021 decreased 5.83% when compared to the third quarter of 2020

<u>FOURTH QUARTER</u>
The *dollar amount of accounts placed for collection* in the fourth quarter of 2021 increased 17.70% when compared to the fourth quarter of 2020.

AVERAGE-SIZED ACCOUNT

During the last eight (8) quarters (1Q 2020 to 4Q 2021), the analysis showed that *the average-sized dollar amount* of a delinquent receivable placed with a certified commercial collection agency ranged from $3,416 to $4,456. These averages are considerably higher than previous years studied.

During 2020, the *average-sized account* was $4,071, while during 2021, the *average-sized account* was $3,651, which is **<u>10.32%</u>** lower than 2020.

FULL YEAR

2020	2021
$4,071	$3,651

The following is how 2021 compared to 2020, quarter by quarter:

FIRST QUARTER
The average-sized account in 1Q 2021 was 3.34% lower than the average sized account in 1Q 2020.

SECOND QUARTER
The average-sized account in 2Q 2021 registered a considerable 23.33% lower than the average-sized account in 2Q 2020.

THIRD QUARTER
The average sized account in 3Q 2021 was 18.96% lower than the average-sized account in 3Q 2020.

FOURTH QUARTER
The average-sized account in 4Q 2021 was 4.17% higher when compared to 4Q 2020. As you can see, only in 4Q 2021 did the average-sized account increase when the years were compared.

2021 - MOVEMENT BETWEEN QUARTERS

NUMBER OF ACCOUNTS PLACED FOR COLLECTION	
From 1Q 2021 to 2Q 2021	↑ .82%
From 2Q 2021 to 3Q 2021	↑ .80%
From 3Q 2021 to 4Q 2021	↑ 9.95%

From 1Q to 2Q, the data showed a slight increase in the number of accounts: less than 1%. From 2Q to 3Q, another slight increase was realized again, less than 1%.

Historically, the largest number of accounts placed with third party agencies is in the third quarter. Then 4Q 2021 came around. A significant increase was realized when 3Q was compared to 4Q; the number of accounts placed with member agencies jumped 9.95%. The Association queried and heard the causes of the increases, which were nothing out of the ordinary. Anecdotally, members obtained new clients and existing clients increased placements for year-end write-offs. It should be noted that, overall, the number of accounts placed in 4Q 2021 was the highest of all eight quarters studied.

DOLLAR AMOUNT OF ACCOUNTS PLACED FOR COLLECTION	
From 1Q 2021 to 2Q 2021	↓ 5.52%
From 2Q 2021 to 3Q 2021	↑ 5.45%
From 3Q 2021 to 4Q 2021	↑ 16.92%

The analysis showed that from 1Q to 2Q, there was a decrease of 5.52% in the dollar amount of accounts placed for collection. A rebound was realized when the Association compared 2Q to 3Q which showed the dollar amount of accounts placed for collection increased by 5.45%. A notable (and welcome) jump of 16.92% was seen when the Association compared 3Q to 4Q. Generally, agencies reported receiving more accounts with larger dollar balances as the cause for the increase. The dollar amount of accounts placed in 4Q 2021 was the highest of all eight quarters studied.

2020 - MOVEMENT BETWEEN QUARTERS

NUMBER OF ACCUNTS PLACED FOR COLLECTION	
From 1Q 2020 to 2Q 2020	↓ 9.8%
From 2Q 2020 to 3Q 2020	↑ 5.8%
From 3Q 2020 to 4Q 2020	↑ 11.04%

2020 presented its significant challenges in every aspect. The effect of the pandemic in the collection industry was seen by moratoriums on placements, state government executive orders, work-from-home, communication difficulties and looming legislation, to name a few. How were placement of accounts affected? The number of accounts placed decreased 9.8% in 2Q 2020 when compared to 1Q 2020. The second quarter of 2020 registered the lowest number of accounts placed in all eight quarters analyzed.

While traversing the aforementioned effect, the industry saw slight glimpses of how a new normal was realized in the flow of collection work. When 2Q 2020 was compared to 3Q 2020, an increase of 5.8% was seen and when 3Q 2020 was compared to 4Q 2020, the number of accounts increased a substantial 11.04%.

DOLLAR AMOUNT OF ACCOUNTS PLACED FOR COLLECTION	
From 1Q 2020 to 2Q 2020	↑ 6%
From 2Q 2020 to 3Q 2020	↑ 4.39%
From 3Q 2020 to 4Q 2020	↓ 8.85%

Despite the decrease in the number of accounts placed, members reported that from 1Q to 2Q 2020, there was an increase of 6% in the dollar amount of accounts placed for collection. A further increase of 4.39% is shown from 2Q to 3Q 2020. However, the dollar amount of accounts placed for collection decreased from 3Q to 4Q 2020 by 8.85%.

SUMMARY AND CONCLUSION

Not surprising, this summary report shows the largest dollar amount of accounts placed and the largest number of accounts placed in 4Q 2021, when compared to the previous seven (7) quarters. As stated in previous papers and webinars, the effects of shutdowns and moratoriums in 2020 notably impacted the placement of accounts with outside sources but was not as prolonged as first expected.

Interestingly, from 1Q 2021 to 3Q 2021, agency members reported large swings in the dollar amount of accounts placed for collection-*increases, as well as decreases*.

The shifts were smaller in number of accounts placed for collection between 1Q and 2Q and then again between 2Q and 3Q. However, as exhibited in this report, when 3Q and 4Q were reviewed, there was a significant increase overall.

In mid-2022, the Association looks forward to publishing and sharing its findings in a multi-year analysis, stretching back six (6) years.

What lies ahead? The industry keeps a laser focus on manufacturing indices, as well as continued supply challenges, noting that new orders, as well as back orders are still increasing. Industry participants are acutely aware that in the coming twelve (12) to eighteen (18) months, the US economy may continue to see good growth rates, but at the same time, realize that the instability in the world may impact that growth.

Continued dialogue between credit practitioners and their collection agency partners creates a view, through a clear lens, so that the proper administration of delinquent receivables, including prompt placement of accounts with third party certified agencies, can facilitate the envisioned improvement in DSO and bad debt.

If you have any questions or would like further information, contact Annette Waggoner,
Executive Director, Commercial Collection Agencies of America
awaggoner@commercialcollectionagenciesofamerica.com

Top 10 Reasons Customers Delay Payments

How Credit and Billing Best Practices Can Prevent Delinquent Accounts

By: Krista Glenn, Director of Marketing & Jason Szwed, Vice President, Client Services, ABC-Amega, Inc.

Stuff happens. Product deliveries get delayed, companies move, employees retire, invoices have errors, and so on. Many times, this is the 'stuff' that results in past due accounts receivable.

We queried our collections system for the frequently occurring reasons for nonpayment over the past 24 months, and we found that our clients could have prevented a great number of these issues by putting some proactive, consistent measures in place.

Top 10 Reasons Customer Payments are Delayed

1. The Invoice Was Never Received (or Lost)

Our collection representatives heard this excuse from our clients' customers more than 26,000 times in the past two years. Whoa! So, what can you do to prevent this from happening with your customers?

One of the easiest ways to ensure your invoices make it to the correct party is to check your records on a regular basis, including your ERP and/or CRM databases, credit applications, and purchase orders. Work with your sales and billing teams to ensure a process is in place to review and update these files at least once per year, ideally every six months.

2. Your Customer Claims They Already Paid

This claim is nearly as common as the one above. Since January 2020, our collection reps heard our clients' customers tell them they had already paid a presumed past-due invoice more than 23,000 times. In some cases, it was indeed a case of the check and payment demand crossing in the mail, but more often than not, the issue was related to our clients' cash application processes.

Just as it's essential to check your records to make sure invoices are sent to the proper contact, it's also necessary to review how you are applying payments, internally. Procedures should be in place to periodically review your company's cash application process to ensure nothing is broken, as well as to update and manage unapplied payments in your system regularly.

3. AP Needs Additional Documentation Before They'll Pay

Documentation requests have occurred a lot (over 16,000 times in the past two years). It's no surprise that the person paying the invoice is often not the person who placed the order with your company. Accounts payable departments generally have procedures where a certain amount of backup documentation is required before they'll pay an invoice.

Examples of these documents can include a copy of the sales contract or PO, proof of order, or delivery confirmation.

4. AP Needs Information About the Product or Service

This reason code is a bit of a 'catch all'. Essentially, what it means is that your customer's accounts payable have questions they need clarified before they will pay the bill. These questions might be related to the specific product or service, or about invoice coding that they're not familiar with. Anything that is unclear to the person responsible for paying the invoice could result in a 'more info needed' delay.

Work with your billing team to ensure anyone with an appropriate level of background information can make sense of your company invoices. Test this out by having someone outside of credit, collections, sales, billing, or AP look over one of your invoices to see if they understand it. Take their feedback into consideration to determine if any changes are necessary.

5. Your Customer Has a Dispute that Needs to be Resolved

Invoice disputes come in many varieties, but they're usually attributed to one of three things:

1. The product or service itself
2. The price charged
3. The payment terms

This could be related to a terms discrepancy, an issue with the product quality or service delivery, or an incorrect rate or invoice charge.

It can be challenging to see these issues coming – especially if the billing department is not aware of special pricing offers or exceptions that may have been put into effect by someone on the sales or service team. Regular communication between your credit, sales, service, and billing teams is key to preventing these types of disputes.

6. The Customer Can't (or Won't) Pay, Makes a Settlement Offer or Requests a Payment Plan

We get it. Sometimes, the customer just doesn't want to pay. Other times, they can't. For whatever reason, company funds may be tied up, or irregular constraints have been put on the AP department. In our 93 years in business at ABC-Amega, we've heard all the excuses!

We often find these delays to be nothing more than stalling tactics to extend terms. There's not much you can do to prevent or predict this from happening – that is, unless specific customers have a habit of employing such schemes. You'll want to have regular service calls with these customers to ensure their expectations are being met. These meetings should help prevent the 'won't pay' and settlement offer occurrences.

To avert customers' temptation to pay late or request payment plans, offer a discount for pre-payment – or a surcharge for late payment and payment plans.

7. There was an Electronic Billing Issue

When we hear this excuse, the customer often tells us that they couldn't submit payment through the vendor's payment portal as they were supposed to. Specific issues related to this include expired log-in credentials (without an easy way for them to reset), unanswered support tickets, updated banking information, or a general issue with the vendor's EDI software.

To prevent these types of billing issues, make sure you have a process in place for customers to self-serve and reset their credentials in your payment portal. To take it a step further, ensure that portal log-in access is discussed when you review the company's credit application, purchase orders, ERP and CRM contact information. We suggest doing this no less than once per year or, ideally, once every six months. You should also schedule regular (i.e., quarterly) testing of your EDI system.

8. Your Customer Requested a Billing Adjustment or Reversal

There could be several reasons why customers would request a change to an invoice. The most common reasons we hear are that there was an error with the price charged (i.e., wrong per item cost or incorrect total cost), an issue with the quality of the order, or a portion of the order was damaged or returned and requires reimbursement.

9. The Wrong Customer Was Billed

Your customer says they never received your invoice. They're likely telling the truth in most cases, and you missed updating necessary contact records. We come across this issue most often when companies move their offices. Given the state of the work right now, it's safe to assume the rate of this occurring will continue to increase. Many companies have moved to work-from-home or hybrid models. Others have closed or merged office locations, so paying attention to your customers' email signatures and other outbound communication is important to ensure you don't miss timely mailing information updates.

At ABC-Amega, we often see this issue occur with clients who have multiple customers in a single office building (e.g., telecom and energy providers). So the bill will be sent to the correct service address, but the tenant they billed is no longer occupying the suite they mailed the invoice to.

10. The Service or Product They Received was Unsatisfactory

Finally, the tenth most frequently occurring dispute we encounter is directly related to a product or service issue.

In credit, you don't have any control over the quality of the products or services your company sells, but you can control the frequency of your communication with your sales and service team. Therefore, it's best to work with these departments and put measures in place to ensure that invoices are adjusted accordingly when a complaint is verified.

There are at least a dozen more reasons that we've recorded to understand why customers dispute or delay payment. Some of these include missing or invalid purchase orders, company name/address changes are needed on the document before they'll pay (a stalling tactic for some, a company policy for others), the wrong tax rate was charged, or the company recently filed for bankruptcy.

As a vendor, some of these delays could be controlled or prevented by putting a few proactive measures in place. However, we realize that customers and processes are rarely perfect, and a percentage of your accounts receivable will always be past due. Leading third party providers should be able to customize their collections system with your company's unique dispute reasons. They should track and report on this data to help you identify the root cause of payment delays, ultimately helping you prevent this 'stuff' from happening in the future.

About the Authors

Krista Glenn, Director of Marketing

With over 20 years of marketing experience, Krista leads ABC-Amega's corporate branding, marketing and communication efforts. She oversees the company's marketing team who is responsible for content creation, social media, event planning, market intelligence and graphic design initiatives. She works closely with ABC's business development team to assist with lead generation, managing RFPs, proposals and presentations, and the company's client service department to further their goals and objectives.

Jason Szwed, Vice President, Client Services

Jason is responsible for overseeing the company's strategy, policies and procedures for client service and client experience, working in collaboration across all departments, and directing client services team members in client and company objectives.

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1812 Baltimore Boulevard
Suite H
Westminster, MD 21157
443-821-3000