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Beyond the Quill



The Web Offers Near, Real-time Cost-efficient Notice

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When corporate clients have to restructure under chapter 11, controlling expenses is imperative. Court documents in large cases can stack up to fill multiple railroad cars. Commensurate copy, delivery and mailing costs are enormous. However, there is a way to increase the immediacy of communication to key groups, while dramatically reducing costs. It is found in online communication. This article will discuss one example for online communication—a web site that has already saved big dollars for *UAL Corp.*, Case No. 02-B-48191 (N.D. Ill.) (www.pd-ual.com).



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There is no question that we have become a wired society. The most recent statistics cited by a 2003 *HarrisInteractive*® report show that 67 percent of the U.S. population, or 140 million people, now have access to the Internet either at home or at work. According to a January 2003 *MORI Research* report, those who use the Internet at work spend more time with online media than with any other media, including television.

Internet web sites have been used for a number of years in the class action arena.

For the most part, these communication hubs provide court documents and pertinent information to visitors 24 hours a day, seven days a week. In addition to United Airlines (UAL), only a few mega-bankruptcy cases, such as Dow Corning Corp. (www.implantclaims.com), have included a unique, dedicated web site as an information hub where visitors can download critical documents and claim information.

What makes www.pd-ual.com different from past sites is that it is closely tied to a robust e-notice program, where more than 600 interested parties are blasted regularly with electronic pleadings as they are filed with the court.

According to UAL's restructuring attorney, **David Seligman** of Kirkland & Ellis in Chicago, the bankruptcy court overseeing UAL's case is still in the process of transitioning to the Electronic Case Filing (ECF) system, and that is one of the reasons why permission was given by the court to serve notice of court filings electronically. The court also approved case-management procedures, which outlined provisions authorizing UAL to electronically notify the Rule 2002 list. The case-management procedures also required that parties include in their notices of appearance an e-mail address at which they can be served electronically.

As documents are filed with the court, the pleadings are e-mailed to these individuals in a pdf format. The documents have ranged from 10 to 200 pages in length. With documents of this size, photocopying and delivery costs could add up quickly. Additionally, overnight delivery charges range from \$12 to \$15, and international delivery can cost as much as \$40 per document. Corresponding by e-mail has resulted in considerable savings. As Mr. Seligman indicates, "It helps a great deal. It results in tremendous savings for creditors and the debtor. You don't have the overhead."

The goal of reducing the administrative costs of photocopying and mailing documents is nothing new. For years it was long recognized that the courts charged fees

in excess of those that were charged by private entities. That is why Congress enacted Public Law 101-162, Title IV, §403, Nov. 21, 1989, 103 Stat. 1013. Section 403 provides that:

Notwithstanding any other provision of law, for fiscal year 1990 and hereafter, (a) The Administrative Office of the U.S. Courts, or any other agency or instrumentality of the United States is prohibited from restricting solely to staff of the clerks of the U.S. Bankruptcy Court the issuance of notices to creditors and other interested parties. (b) The Administrative Office shall permit and encourage the preparation and mailing of such notices to be performed by or at the expense of the debtors, trustees or such other interested parties as the court may direct and approve.

The purpose of this statute was to encourage debtors to eliminate the administrative workload on the bankruptcy courts and clerks by utilizing cost-efficient administrative services.

Cost efficient administrative services have now evolved into online communication. As every bankruptcy professional knows, the federal bankruptcy courts are quickly moving toward the electronic filing of cases through Case Management/Electronic Case Filing (CM/ECF). CM/ECF provides the federal courts with updated docket management and allows the courts to maintain the documents in electronic form. It provides courts with flexibility to permit case documents, including pleadings, motions and petitions, to be filed with the court via the Internet.

Mr. Seligman views the www.pd-ual.com web site as a key cost-saving measure for UAL and critical in the rapid dissemination of court filings. "The site allows us to provide information in nearly real time, which means that affected individuals have more time to examine an issue and respond. It used to be that if you were filing a motion that only affected the rights of one or two parties, you would have to justify the cost of serving the entire Rule

2002 service list, particularly if by facsimile or overnight mail. Now with online service, I can give wider notice and I don't have any increased costs. This benefits affected parties, creditors and the debtor. Now everyone has a greater opportunity to know what's going on in the case. And now they have more time to react."

Web traffic and accounting reports from notice and claims agent Poorman-Douglas Corp. indicate that UAL has saved millions by using e-notice along with the web site. To date, the site has received nearly 145,000 visitor sessions; nearly 300,000 files have been downloaded, and each week 3,000-6,000 e-mails are sent to key individuals.

The web site is constructed to provide the most timely information on the home page, including restructuring agreements, brochures on UAL's restructuring, communications to Mileage Plus Members and other customers, as well as bar date orders and other pertinent information. The site hosts court-filed documents including various voluntary petitions, bridge motion/orders, first-day orders, omnibus hearing agendas and special court filings. For ease of communication, the site posts links to Kirkland & Ellis, the U.S. Trustee, Poorman-Douglas Corp. and a toll-free information hot line.

Additionally, proof-of-claim forms can be downloaded in pdf format. Visitors to this web site can view daily updated information; it allows visitors to search and sort information by case number, claim number and date filed.

Conclusion

A bankruptcy case web site can offer significant benefits to a debtor and its creditors. A dedicated site housing critical information can keep key creditor groups informed and lessens the chance for the rumor mill to start. Additionally, a dedicated bankruptcy web site reduces the traffic to a corporate site that might otherwise be engaged in e-commerce, which generates revenue.

As information hubs, web sites provide great value. Affected groups will have the opportunity to have timely information. Broader notice by way of the web may also be a useful tool to demonstrate to the courts, the trustees and creditor groups that adequate notice was provided of all issues relating to the bankruptcy. In future complex bankruptcy cases, web sites will move from static hubs to more interactive repositories supported by e-notice. ■

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