Oliver.

A 360° Perspective: Collections Litigation in a Dynamic Market

Heidi Staloch, US Bank

Stefanie Jackman, Ballard & Spahr

Walker White, Oliver

White Paper, 2020

A 360° Perspective: Collections Litigation in a Dynamic Market

Executive Summary

The headlines in 2020 are consumed with the pandemic, even beyond healthcare. Including articles on how the pandemic is impacting the economy, education, children, etc. The truth is, COVID-19 is impacting nearly every aspect of our lives, including how businesses interact with consumers. Some businesses have closed, others are innovating, and some are thriving.

The collections industry fits squarely in the innovate space for two reasons:

First, the amount of debt is growing substantially. The collections market is currently experiencing the first credit cycle in the CFPB era. In February 2020, according to the St. Louis Federal Reserve, consumers were expected to default on at least 2.3% of outstanding debt, costing creditors over $325B. However, that prediction was prior to any impact of the pandemic. If previous recessions are any indicator, defaults will double.

Second, the industry is ripe for change. Consumers are demanding a different way to interact with them. Regulators are demanding transparency and strict adherence to laws, rules and regulations. And technology has evolved to address common failures in the current collections litigation process. Most collections litigation strategies lack the built-in agility needed to manage the changing dynamics of the market, bringing to light clear failure points in the process. Each time creditors hit a failure point, they leak value out of their strategy, directly impacting their bottom line.

The question is…how can the collections litigation industry manage the challenges of today and prepare for an inevitable influx of debt collection?

That question was answered in a recent webinar, with a 360° view from a creditor, lawyer and technology to discuss the five failure points in collections litigation. Heidi Staloch, Vice President and Assistant General Counsel with US Bank, Stefanie Jackman, Partner with Ballard Spahr, LLC and Walker White, Chief Executive Officer of Oliver Technology Corporation examined…

- the impact of COVID on collections,
- the latest challenges and solutions for compliance, and
- how to conquer the five failure points that are leaking value out of litigation strategies.

This piece incorporates that 360° view into an examination of the critical failure points of traditional collections litigation strategies, in terms of the challenge to cost-effectively scale, while meeting compliance requirements. It will also identify innovative capabilities that fix these failures.

The clear value of a collections litigation solution exists in the combination of these processes, allowing creditors to reduce costs, maintain rigorous compliance and accelerate the litigation process to increase revenue in less time.

Assessing Current Trends and their Impact on Collections Litigation

A Perspective from Stefanie Jackman, Partner with Ballard Spahr

There are two topics that are top of mind for the collections litigation industry; the pandemic and the new collections rule that will be announced shortly.

Both of these topics are important to examine before we address the five failure points in collections litigation.

The pandemic resulted in significant business disruptions impacting collection activities, filing of collection lawsuits, seeking garnishments, and communications. Over the course of the last eight months, a number of states put out anywhere from “guidance to actual emergency regulations” that are important to adhere to, whether legally binding or merely advisory.

In response to the pandemic, many creditors have curtailed a number of collection activities in an abundance of caution. Additionally, a number of creditors have offered a wide variety of accommodations to consumers, including payment extensions and deferrals, interest adjustments, late fee waivers, increased online payments and support, and halting repossessions in order to give consumers space to get through the economic challenges.

There also remains much uncertainty in the market that we need to manage, especially if we are seeking to take legal action on debts, because we want to make every effort to do so in a compliance way that does not risk potential counterclaims or other issues that could impact our ability to leverage settlements and resolutions.

And let’s not forget that many companies had to migrate rapidly to the remote work environment. In most instances, that required a significant investment in technology and other mechanisms to collaborate and work effectively in that environment.

In sum, the pandemic resulted in an avalanche of changes overnight that transformed many of our standard approaches to our business operations and activities.

Where do we go from here?

At this point, we are a little more stable as far as how we are coping in the new remote environment, but the new CFPB collections rule is imminent. We need to be thinking about how we can get ahead of it now through investments in processes, technology, staffing models, collection strategies and whatever else is needed to help us realize operational and compliance efficiencies.

The CFPB’s new rule is unlikely to give us all the answers on how to implement new digital communications and online channels in a compliant way. So, if we want to remain competitive and profitable, we need to think through how we can manage these challenges while remaining operationally efficient and effective.

Another challenge we’ve been contending with is how to set up systems, mechanisms and operational portals through which we can manage all the state law variances in collection litigation. Many anticipate a significant rise of collection litigation against consumers as a result of various environmental impacts and factors. The key to success is being able to quickly and efficiently do more with less. To do that, you’ll need to conquer the five failures in collections litigation—which we will examine next.

Failure #1: The Data Model is Fractured

THE FAILURE: The data model is fractured

Antiquated data collection with limited access across the parties

Typically, creditors approach the process of compiling account information from multiple parties manually – an antiquated, inefficient and costly choice.

A manual approach limits data access across parties and raises the risk of inaccurate or incomplete data, increasing downtime due to the need to rework and correct mistake. It also adds unnecessary costs to the overall litigation process.

Heidi, would you agree that the data model is fractured?

Yes, the bank systems of record are archaic…they certainly weren't designed for the dynamic environment we have today, such as a pandemic or wanting to pivot and adjust based upon consent orders…as Stefanie mentioned…it's a problem to calculate statute limitations and that affects our litigation strategy and snowballs from there.

THE FIX: A modern, holistic Platform

360° view of data across all relevant parties

In order to move from a manual to an agile solution, the following critical capabilities are required:

- **Consolidate:**   Data from all sources should be digitally consolidated into one platform and provide a 360° view of the data. A modern API protocol is used when integrating data from multiple sources to make integration faster, cost-effective and more secure.

- **Orchestrate:** Simply consolidating data is not enough, it needs to be functional across the litigation process and accessible to all relevant parties when they need it. Automating bulk loading, cleansing and redaction is critical. When data changes at the source, it should automatically update the data record and documents, as well as notify relevant parties.

- **Litigate:** Beyond consumer data, a robust data model includes built-in laws, rules and procedures from regulatory bodies, law firms and creditors onto the platform.

Stefanie, why is it important to have access to clean, current data?

Everything stems from having clean, crisp, usable data. Data disaggregation, disparate systems, failure to upload, reconcile and incomplete audits lead to big consent orders. I've seen many instances where the client's system was an amalgamation of homegrown "bolt-ons" just trying to fix the problem of the day…and it ultimately cost them money…with both their clients and regulators.

You may need to invest in overhauling the entire technological chain…you need to have systems that can be responsive to tracking across and within accounts in multiple and unforeseeable ways…data functionality, data utility and the ability for you as an organization to manipulate that data into different configurations, reports, etc.

Failure #2: Operating on Disparate Platforms

THE FAILURE: Operating on disparate platforms

Inconsistent, ineffective file management impacts cost and risk.

In a manual environment, multiple parties in the collections litigation process update and alter the same files on different systems. This disconnected approach deems the process essentially ineffective.

Creditors need to eliminate the communication, compliance and process failures that are leaking value out of their litigation strategy. Traditional communication methods significantly impact time to revenue, cost and risk—from managing changes, problems, and status to keeping up with current laws, rules, and procedures—making it nearly impossible to create an efficient process across the channel.

Heidi, do you see examples of this from the creditor's perspective operating with various law firms?

Yes, one problem is keeping up with email communication…did they see it…long lag times in response…let alone trying to keep track of all the follow up emails and different people responding.

It slows down communication which can affect settlements or if you don't have the information needed for court appearances and litigation.

Another problem is exposure. The lack of knowing that there was an answer or counterclaim on a file can affect the bank's risk if we weren't represented. If a counterclaim doesn't automatically get back to us and instead relies on contractual notice provisions, it can cause a lot of problems.

THE FIX: Collaboration and execution in one, streamlined platform

Management of all activity by all involved parties within the context of the file

Here are the critical capabilities needed to move from disparate systems to an agile solution:

- **Consolidate:** The platform should not only consolidate all the data, but also all the communication between parties, allowing creditors to manage everything that everyone is doing within the context of the file. The platform should also provide quick and secure access to the right people at the right time.

- **Orchestrate:** Effectively orchestrating the many handoffs, approvals, and reviews to accelerate the process includes automatically sending status alerts to relevant parties, advancing files to the next stage when work is complete, and capturing a standardized audit of the "who, what and when" of each transfer.

- **Litigate:** To successfully monitor the litigation process and control the outcome, creditors need end-to-end visibility of the entire channel. A consistent approach, which includes a coordinated strategy among all parties based on shared information and procedures, will allow creditors to cost-effectively scale the capacity.

Heidi, what do you think is the biggest benefit of this capability for a creditor?

Transparency of the matter data is the biggest benefit. Being able to rely on it and fix it where we need it. Knowing where a file is and the status of litigation. Overall compliance, whether it's legal compliance, civil process compliance or our own SLA.

Then of course, we're all in this for recovery, revenue, and managing performance. So, knowing what's happening or not happening is important. My preference is knowing about an issue today instead of 30, 60 or 90 days later to gives us a chance to fix, learn, and/or prevent problems.

Failure #3: Effectively Maintaining Compliance Requirements

THE FAILURE : Effectively maintain compliance requirements

Maintaining compliance requirements has increased the need for more FTEs, while slowing time to revenue

Keeping up with federal, state, local and venue-specific laws is a huge cost to manage and risk to collection. Creditors need staff to monitor the laws, rules and procedures across the nation.

Since the formation of CFPB, the amount of quality control checks has grown exponentially. Creditors had to either hire more people or outsource this capability. This was difficult enough to cost-effectively manage before. Now with the expected increase in debt, this approach cannot scale to meet the volume.

Similar to the way Turbo Tax transformed filing taxes for consumers and accountants, the collections space faces an opportunity to automate the management of legal and compliance requirements to reduce risk, cost and labor, without knowledge of code to manipulate.

Stefanie, what do you see on the horizon for compliance in the next 18-24 months?

It's going to be essential to manage volume. Being able to quickly pull reports with relative frequency and monitoring how quickly accounts are going from placement to a complaint being filed.

Getting insight will help to not only manage compliance risk, but also see if there are areas in your operation to be more efficient. To quickly, systemically, and efficiently know that updates are logged into your system and filtered across all communication with confidence.

The new CFPB rule will require a need to audit and test for the call limit and communication controls (among other things). All of this is much better done, both from an efficiency and accuracy perspective, systemically verses using manual processes.

THE FIX: A platform with compliance built-in

All federal, state, local and venue specific laws plus all regulatory, creditor and law firm rules and procedures are built into one platform and managed across the channel.

- **Consolidate:** When all these laws, rules and procedures are built into one platform, an intelligence system is created and applied to every stage of the litigation process. The system can be refined into cascading logic of global, regional and local workflows and incorporate specific business rules and procedures throughout each stage of the litigation process.
- **Orchestrate:** When workflows are purpose-built to adhere to compliance, creditor and legal firm standards, files automatically advance to the next step when standards are met. If a file needs review, the platform should automatically notify the relevant party so modifications can quickly be made, and changes can be accepted with a click of a button. Significantly simplifying and documenting QA throughout the entire litigation process.
- **Litigate:** When repetitive processes are streamlined and a robust engine handles exceptions, litigators can focus on meaningful work. Every action by every party needs to be documented to automatically provide an audit. In the name of "the art of litigation," law firms must be allowed to incorporate their unique processes into the workflow, while the platform presents a consistent approach to the consumer and end-to-end visibility to the creditor.

Heidi, what benefits do you think US Bank would get from codified compliance?

The ability to have those state level laws and civil processes built-in lets us objectively operate with a view that our firms are compliant. Plus, it eliminates the cost of hiring and training professional staff on every state and hope they're getting it right. We have issues with employee turnover and retraining staff to test and develop external reports. It would significantly simplify the work that we're doing and make it better.

Failure #4: Litigation lacks economy of scale

THE FAILURE : Litigation lacks economy of scale

Individual law firms maintain their own knowledge base making it difficult for creditors to scale within and across states.

Since creditors partner with law firms in each state, essential business logic about how to litigate in a given state is stored into the individual law firms' systems and is not accessible to the creditor. This makes it difficult for creditors to develop a consistent process across the channel to achieve an economy of scale.

Heidi, what pains have you experienced in managing different law firms?

Managing a network of firms is costly for them and us. Our SLAs may be the same from firm to firm, but scaling is costly for us because each firm is unique.

THE FIX: A platform with integrated law firm knowledge

Integrate law firm knowledge into a consistent litigation process on a shared platform

- **Consolidate:** Streamline all data, documents, government and business laws, rules, procedures, and litigation processes across all parties onto one platform and provide access to all relevant parties.

- **Orchestrate:** Standardize the process to consistently and efficiently litigate the bulk of the inventory. This allows law firms to litigate more inventory faster and cheaper and focus on the exceptions that need meaningful attorney review.

- **Litigate:** Creditors have better visibility into inventory that is all litigated in a consistent workflow and can more effectively manage the progress of each file to quickly identify and resolve problems. It's critical to have dynamic and comprehensive dashboards that provide leading indicators of success and failure to give creditors more control of the outcome.

When a creditor can integrate law firms onto one platform using a consistent litigation process, all parties realize an economy of scale. Even more, creditors are provided current end-to-end visibility and control of the process.

Failure #5: Stalled Inventory

THE FAILURE: Stalled inventory

Stalled files equate to lost value. When the percentage of stalled files increases, profitability dwindles.

Today, inventory is distributed to individual law firms in batches. With limited to no oversight of all files across the channel, inventory can become buried or under- utilized. Each file has many moving parts and inevitably, active files garner the most attention, while higher value files may go unnoticed.

Heidi, what is the impact of stalled inventory on your business?

Files without contact don't create recovery. So, when we don't know that files aren't moving then we can't change our skip tracing. We can't address finding better assets, or lack of effort such as an employee issue or need for training. So, if inventory is stalled, it just simply doesn't bring in the money.

THE FIX: Automation of inventory management

Automating inventory is a new solution, in a unique way, to a common problem.

It starts with visibility. A complete dashboard of all files, across all parties, within each stage of the process gives creditors unprecedented access to this level of oversight.

And ends with control. This level of insight allows creditors to accurately manage inventory and the platform allows creditors to control the outcome.

- **Consolidate:** A consolidated view allows all relevant parties to see which files are active and which are not. By adding actionable and consumable views of inventory, creditors can rely less on people and more on automation to keep inventory moving.
- **Orchestrate:** Workflows should be based on individual files verses pools/batches. The platform should automatically manipulate, test and compare individual matters to determine if the file should be placed and then evaluate multiple variables of data simultaneously to make a data driven decision regarding where to strategically place files. Automatically processing files to the next step is critical to prevent inventory from stalling,; yet some files need human interaction, requiring the platform to flag those files and automatically notify the appropriate person that action is needed.
- **Litigate:** Better visualization ensures more inventory will move in a consistent manner to create more value. When a creditor can visualize the value of each file (including the stage each file is in and why files are not advancing) they can proactively address issues like rebalancing load across firms or rebalancing files based on probability of success. Creditors need a comprehensive view of the inventory and an agile platform that can quickly modify the flow of inventory to generate higher value.

How US Bank Navigated through COVID and Prepared for the Future

A perspective from Heidi Staloch, Vice President & Assistant General Counsel, US Bank.

How did Oliver CLX help you navigate through the pandemic?

The unique opportunity we had during the current environment was working together in a platform with the creditor and law firms collaborating daily. With a software that was agile enough to pivot to the current needs, we were able to manage our inventory when we needed to put litigation on hold like many other creditors did. We didn't have to stop working—our firms were able to continue working—it just didn't get sent out. So, we were able to do some meaningful review and once our litigation hold was lifted, we were ready to get back moving and didn't have a lot of lead up time and months of trying to get inventory back into the market.

It also helped with our customer outreach initiatives which made a big difference in how quickly we were able to approach customers. We wanted to understand if they had new circumstances so we could build that into our process now instead of learning about it 3-6 months later.

For us, Oliver CLX was very cost-effective. That proved true during the pandemic, I think for both our firms working in the platform and the bank because we were able to efficiently handle files and then be teed up to get back to work when the time was right. So, Oliver CLX created for us a more planned and balanced approach in handling COVID.

What made you decide that you needed a solution like Oliver CLX to prepare you for the future?

I've been at the bank now a little over five years. I was looking for an innovative solution that was agile enough to get things done swiftly and get to market fast. It felt to me that the collection industry was operating back into the 80s and 90s. Our senior leadership wanted to develop solutions that would move us forward. So, when I went out and surveyed, there just really weren't a lot of solutions out there that had the collaboration and agility that we envisioned as the next step for this industry.

We wanted to change our collection recovery system because the bank systems of record are archaic. We needed something dynamic enough to pivot and adjust based on consent orders that come down. We also had difficulty talking back and forth between our own internal systems, let alone those that we outsource. The lag time in email slows down communications which can affect settlements. It affects the need for information, and it affects court appearances and litigation. Scaling to a nationwide network with firms that are on different systems is costly for both the bank and the firms.

We wanted something that was cost-effective. We didn't want to have a lot of fees to support a litigation strategy. We wanted to automate the things that a human isn't needed to do and free them up to make decisions.

Finally, I wanted to boost our confidence with strong internal controls. US Bank had stopped and restarted our litigation. So, having those controls built-in place including extra controls for internal partners. Being able to audit within the platform is important and the transparency has made a high difference in the strategy. It lets us move from a vendor/client relationship to a partnership relationship so that we're all working in one strategy to get us where we need to be.

Conclusion

Think about it. With your business under the microscope of regulators, most creditors are forced to manage their business with caution.

While the debt is mounting, the pressure is building. At some point, the storm is going to pass, and the economy will expand.

Now is the time to re-tool your collection litigation process into an agile system so you can cost-effectively scale your operation to capture more revenue in a shorter timeframe when the opportunity arises.

This paper gave you numerous capabilities that you can implement today and experience immediate cost savings; as well as the capabilities you need to scale your operation to increase revenue, accelerate the litigation process and maintain rigorous compliance.

To learn, contact Oliver Technology at info@olivertechnology.com and request more information or schedule a private demonstration.

Increased Revenue

Increase revenue by efficiently scaling legal filings through orchestration of expensive, repetitive manual tasks.

- Increases efficiency of pre- and post-placement employees by 4-5 times.
- Reduces cycle time between parties by 80%.
- Eliminates 95% of errors and re-work caused by manual processes

Rigorous Compliance

Automate compliance by codifying federal, state, local, venue and customer-specific laws, rules and procedures.

- Automatically incorporates current compliance laws and regulations into workflows and documentation.
- Configures to your Standard Operating Procedures.
- Audits every action by every party.

Simplified Litigation

Drive collaboration, communication and oversight by securely consolidating the litigation process for all parties.

- Accelerates strategy based on current visibility of the entire litigation process across all parties.
- Automates the assembly and redaction of required documentation.
- Drives efficiency by identifying choke points, increasing accountability and monitoring effectiveness.