UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

CRAIG T. GOLDBLATT
JUDGE

824 N. MARKET STREET
WILMINGTON, DELAWARE
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April 10, 2024

VIA CM/ECF

Re: April 11, 2024 Hearing re: WARN Act claims

Dear Counsel:

The agenda for the hearing tomorrow contains a number of items related to the various WARN Act claims that have been asserted against the debtors. In the course of preparing for the argument, the Court believed it might be helpful to the parties for it to set forth its preliminary reactions based on its review of the pleadings. None of this should be understood as a "ruling" on any of the issues described. The purpose is only to share the Court's initial thinking to the extent that is helpful the parties in presenting their arguments.

Given the stakes at issue, the Court is disinclined to conduct a substantive hearing on the merits of the claims at issue in the Debtors Third, Fourth and Fifth Omnibus Claims Objections [agenda items 12-14]. As will be further described below, the Court also has before it tomorrow a fully briefed motion for class certification and a separate motion for the appointment of interim class counsel and consolidation that

overlaps with the claims challenged in these omnibus objections. The Court's objective for tomorrow's hearing is to establish a framework that will permit the issues that bear on the validity of these claims to be presented to the Court for resolution in an orderly and reasonably prompt fashion – perhaps on cross motions for summary judgment if the dispute lends itself to resolution on the papers, and if not following an evidentiary hearing/trial.

In terms of how to proceed, the Court begins with the fact that, as the Supreme Court explained in *Brown Group*, the WARN Act permits unions, under the doctrine of "associational standing," to assert a WARN Act claim on behalf of its members.[1] Here, the Teamsters and Machinists unions have filed proofs of claim on behalf of the more than 21,000 former employees who are their members. As a result, the Court believes that this matter must be addressed in a way that permits the orderly adjudication of at least those 21,000 claims. This is not limited to the fewer than 2,000 employees who filed their own proofs of claim.

That tentative conclusion informs the way the Court approaches the two adversary proceedings. Because of the statutory right that the unions have to represent their members, it seems inappropriate to override that right by certifying a class in the *Coughlen* proceeding and thereby enable a named representative to play that role. Indeed, certifying such a class seems like an exercise in futility, since

[1] *United Food and Commercial Works Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544 (1996) (citing 29 U.S.C. § 2102(a)).

the union would presumably be entitled to opt out of that class on behalf of its members, and then proceed to press forward with litigation over the allowance of its members' claim through the claims allowance process. The Court is thus disinclined to grant the motion in *Coughlen* on the ground that litigating a class action lawsuit in which the class purports to include more than 21,000 union members on whose behalf the unions have filed proofs of claim would be unwieldy and impracticable.

That tees up the question of how to proceed with respect to non-union former employees. The Court's tentative view in that regard is that it seems appropriate to certify the class in *Moore*. Whether or not the class in *Moore* is certified, the Court will in any event need to consider and address the more than 21,000 union claims. Accordingly, it would not appear that adding the approximately 3,200 non-union members who did not individually file proofs of claim would make the case materially more difficult to administer.

It is certainly the case that the debtor has a number of merits defenses to these claims. Some of these defenses may apply to all of the claims (such as the argument that the debtor was a "liquidating fiduciary" and therefore not an "employer" at the time of the layoffs). Others may apply only to a subset (such as the contention that a substantial fraction of claimants have given releases). But at first blush, none of that seems to present a reason why the Court should deny class certification to the non-bargaining unit employees.

Without prejudicing any party's right to argue otherwise, the Court's current inclination is that the Rule 23 requirements in *Moore* are likely met. If that is the case, the question is then how these matters may be administered in a way that promotes the fair, orderly, and expeditious resolution of the disputes on the merits. The Court's inclination is to consolidate the *Moore* class action with the contested matter arising out of the debtors' objection to the unions' proofs of claim and request the parties propose an appropriate schedule for resolving the disputes. To that end, the Court's tentative inclination is that the plaintiff's proposed scheduling order in *Moore* [D.I. 45] is somewhat more protracted than the Court considers appropriate under the exigencies presented by this case. The Court believes that a schedule under which the key issues can be presented for resolution by dispositive motions before the end of the calendar year, with a trial (if necessary) set for the early part of 2025, would be more appropriate.

Sincerely,

Craig T. Goldblatt
United States Bankruptcy Judge