

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

Joe Jameson Court Reporters
(505) 242-2809

Sara Edmonds X

Date:
Wednesday, November 28, 2001

Re:
FURRS
No. 11-01-10779 SA

PH on Motion for Order Compelling Arbitration Under Collective Bargaining Agreement

Attorney for Debtor: Robert Jacobvitz
Attorney for UCC: William Davis
Attorney for Union: Michael Four

Summary of Proceedings:

Exhibits _____

Testimony _____

SETTLED - JACOBVITZ WILL SUBMIT ORDER

Ct: No obj. to m/to serve notice by publication?

A: MetLife has some concern. Combine ntc of m/to conv. w/ntc of admin. clm bar date. Try to split cost of direct mail ntc. I would much prefer direct mail ntc.

Ct: Admin. clm bar date?

A: Prefer direct mail ntc. Combine two and reduce cost. Only have auth. for expenditure involved for public. of ntc. Get auth. for several hundred more.

Ct: For what?

A: Splitting costs of admin. clms. One one side of ntc having m/to conv. and other side have admin. clm bar date.

Ct: Goes out in envelope?

A: Yes. Cost if we use a local company would be in neighborhood of \$10k to \$12k. Trying to share costs and send a combined ntc out. More than the ntc by publication of m/to convert. Have to go back and get auth. for expenditure of additional monies.

Ct: M/convert would be \$2k - \$3k?

A: Would be \$1400.

B: Expressed concern about public. ntc was calculated to where it needed to go. So many natl. creds in this case...

Ct: Lubbock Avalanche Journal?

B: Yes. Not natl. Publish in Wall Street Journal. More natl. publication. IF combine ntc w/dtrs on bar date would be about what that kind of ntc would be. Publication ntc is iffy anyway.

Ct: Balancing test. Have to tell you this iss. came up about a month ago in chambers. Someone from clerk's office came up and someone wanted to do public. by ntc. Talked to Margaret Gay and said talking about \$20k to use those folks. That was where she and I talked about ntc for public. Don't know if Mr. Andazola came up w/those #'s. If drew a triangle from Albuquerque to Lubbock and El Paso reached just about everyone. Get majority of folks. Agree public. is not the best form of ntc. Wall Street Journal would prov. better ntc. If we look at it from practical point of view and get more bang for our buck I think newspaper ntc would work. Iss. of admin. clms is more complex. Ques. is is what is likelihood of people who have admin. clms being missed. Not thought about admin. clm aspect until I walked in here today. More up in air. Already been talk about conversion in this case. Month and a half ago dtr was talking about converting. I don't know who would argue that. Admin. clms could be some little tortilla factory down in Chamborino, NM. Mr. Fish that is a little town in So. NM.

F: Is a winery there, I know where that is.

J: W/respect to sending out a ntc of admin. clm bar date to do it by mail and not public. I think there would be due process iss. Estates w/mil. of \$.

Cost of sending ntc locally is \$6800 for postage and \$200 for every pg. inserted in envelope. \$8800 approx. Dtr thinks it is a good idea to send out that ntc. Ntc will need to be sent on m/convert. No reas. to wait. From estates aspect the cost is less. Don't think dtr is asking court to approve ntc by publication. Cost is not overwhelming.

Ct: Take care of your concern Ms. Behles.

B: Yes.

Ct: Sounds like a better way to proceed. What do you propose we do at this point. Have a m/to set a bar date?

J: Ask ct to set a bar date and go ahead and ntc it out. Propose 40 days after we send the ntc. Specify a date certain.

Ct: So no ques. about calculating 3 days. More user friendly.

J: Other thought is that if the unions are in a position on severance clms to assert the emp. is not req. to file a separ. clm. so unions won't get thous. of calls.

Ct: Not get lots of calls. Sounding better all the time. Gets into iss. of class proofs of claim.

J: 10th circ. has a case. Under collected bargaining unit - clm for sever. is collected under collect. bargaining. Ask ct to allow the sever. clms on behalf of work force. Under collective bargaining unit. Union emp. would be bound by result. If ltd, the dtr doesn't obj. to union filing that particular clm. Guess court is right if any iss., not approp. to put in ntc.

Ct: Sheffelman case was a - Standard Metals filed bankr. while one or two fraud causes pending in NJ. Organized a couple of suits or lead pltf in one of them. Mass proof of claims. Distinction between that kind of circum. - not sure if they had ntc or had Mr. S. repres. them. Where the union is a desig. agent here that really works. Don't want to think about getting admin. clms that have to be processed.

F: On the union iss. the court could order that the union members not need file clms under collect. bargaining agent. Given a time to file a clm. The other thing is under rule 2002 (a) (7). 303 (c). Concerned that were are extending ntc to Dec. 2001. Not sure it will cont. in Dec. Have deadline during ch. 11 rather than being conv. Have deadline run during this next cc period. Gotten that done during cc. Give people two weeks to get ntc in mail. I think it would be useful to have bar date.

Ct: W/respect to appt. of a trustee and ques. whet. it overlaps.

B: Other reas. it would be handy to get ntc out is some ques. between UCC and sec. lenders about way to do a consensual plan. Might help us to get a deal cut. Nice if we could do it.

Ct: Saw mention of a plan. I had been thinking really talking about conv. and only real iss. is when.

D: Unfairness about sending out ntc. Texas emp. have to go thru some set of procedures. W/regard to union not sure on the fly if there oesn't become a conflict w/positions the unions have taken. Union has been in here askin gfor pymts of trust fund. Trust is not the individual clms. Health fund repres. those people w/health clms. Differ. in amt and differ. than those w/severance clms. Seems to me on the fly when some conflict iss. might come about. It would have to be clear if union recovered money have to go to individuals.

Ct: Assumed latter would be the case. W/respect to those people repres. by a union, not sure req. those folks to file - sense of equalitarianism. Like thought for practical aspect the notion of allowing union to file on behalf of a lot of these folks. Keep paperwork down. Help people who are admin. this. Benef. individuals. If someone has clm for sever. benef. rather have someone deal w/it for them.

D: If repres. by a union, shouldn't they contact union. Talking about opt in vs. opt out. May not want to pursue an admin. clm. W/o indication of admin. clm. Have to call up union or send postcard to union saying please repres. me in this. Sugg. at least the people should notify the union that they want the union to repres. them.

P: We don't want to approve something that would prejudice someone. Collect. bargain. agmt is between dtr and union. Emp. are not typically in a class. Rights between parties. In position that it will show we are in a position to bring these clms on behalf of members. Don't have immed. comment on trusts.

Ct: Trusts are differ. than unions.

P: Yes. Little less knowl. about Texas situation.

Ct: Not going to make a decis. today. Will be gone next Wed., Thurs. and Fri. Following week I will have court for a couple of days. Thurs. morn. Nov. 8 want to see some of the stuff we do. Be an ideal time. Designed to deal w/things like this.

F: I had another suggest. Dtr has power to file poc for people. Makes no sense if severance - no clue what rights people in Texas would have had. If the same - say Union would file a poc. Perhaps the dtr could file these clms that the union has asserted as admin. clms. Court could hold hrgs and resolve them. Throw that out as a way to cut admin. burden. Whet. they win or lose that is a separ. iss.

Ct: Based on records of who was working when.

J: Dtr disputes the severance clms so dtr wouldn't want to file clm.

F: If clm valid, is amt. Deemed their poc. Before court w/o this nightmare of filing or not filing poc.

J: Like oppor. to talk to unions to work out a solution. File clms for constituency. Rule on filing tax clms. May req. they file w/in so many days. Dtr would prob. prefer not getting into bus. of filing admin. clms. Hope we can work something out w/unions.

Ct: Local 1564 and 540 for West Texas and parts of NM the major. of emp. are repres. by those two unions.

P: Correct.

J: Non-union employees and four stores that weren't part of a union.