Docket #0001 Date Filed: 6/17/2024

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	**Chapter 11**
ZACHRY HOLDINGS, INC., *et al.*,	)	**Case No. 24-90377 (MI)**
Debtors.	)	**(Jointly Administered)**
AVIS LAMOTTE, *on behalf of herself and those similarly situated,*	)	**Adversary No. _____**
Plaintiff	)	
v.	)	**JURY TRIAL DEMANDED**
ZACHRY INDUSTRIAL, INC.,	)	
Defendant.	)	

CLASS ACTION ADVERSARY COMPLAINT

Plaintiff, Avis Lamotte, on behalf of herself and a putative class of similarly situated former employees as defined herein, brings this suit against Debtor-Defendant Zachry Industrial, Inc., by way of this Class Action and Adversary Proceeding Complaint, alleging as follows:

NATURE OF THE ACTION

1. This is a Class Action Complaint brought under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the "WARN Act") by the Plaintiff on her own behalf and on behalf of the other similarly situated persons against Defendant Zachry Industrial, Inc. ("Zachry" or "Defendant"), Plaintiff's employer for WARN Act purposes.

2. On or within 90 days of May 21, 2024, Defendant made a mass layoff and/or effected a plant closing by, unilaterally and without proper notice to employees or staff,

terminating approximately 4,072 employees at its facility, located at 3901 Twin City Hwy, Port Arthur, TX 77642 ("Facility").

3. Defendant failed to provide 60 days advance written notice to employees or staff as required by the WARN Act, 29 U.S.C. § 2101 *et seq.*, to the affected employees.

4. Plaintiff was officially terminated by Defendant on or around May 21, 2024.

5. Defendant's reduction in nearly its entire workforce at that plant constituted a mass layoff or plant closing, commencing on or around May 21, 2024. As such, Plaintiff and other similarly situated employees, should have received the full protection afforded by the WARN Act.

6. Plaintiff's claims, as well as the claims of all similarly-situated employees, are entitled to partial administrative expense status pursuant to United States Bankruptcy Code § 503(b)(1)(A) and partial, or alternatively, full priority status under 11 U.S.C. § 507(a)(4) and (5), up to the priority cap, with the balance, if any, being a general unsecured claim.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C § 1331 and 29 U.S.C. § 2104(a)(5).

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 2104(a)(5).

PARTIES

10. Plaintiff Avis Lamotte is a citizen of the United States and resident of Port Arthur, Texas. Plaintiff Lamotte was employed by Defendant at all relevant times at the Facility. Plaintiff

worked for Defendant for about two years. Plaintiff is an "aggrieved employee" within the meaning of 29 U.S.C. § 2104(a)(7).

11. Defendant Zachry Industrial, Inc. is a company registered to do business in Texas with its principal place of business located at 527 Logwood Avenue, San Antonio, Texas 78221. Defendant at all times maintained and operated the Facility. Defendant may be served via its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.

12. On May 21, 2024, Defendant filed a voluntary petition for Chapter 11 bankruptcy.

FACTS

13. Defendant is a private, Texas-based industrial manufacturing and transportation company.

14. On or around May 21, 2024, Plaintiff was unceremoniously terminated from employment with Defendant with no warning.

15. According to the Texas Workforce Commission, Defendant provided notice of the May 21, 2024, terminations on June 3, 2024. In other words, Defendant provided notice *after the fact*.

16. Defendant did not provide any WARN Act Notice as required by 29 U.S.C. §§ 2101 *et seq*. even though it planned to abolish, terminate, and/or layoff over one-hundred full-time employees employed there.

17. Upon information and belief, no circumstances existed that would have permitted Defendant from reducing the notification period as provided in 29 U.S.C. § 2102(b).

18. By failing to provide its affected employees who were temporarily or permanently terminated on or around May 21, 2024, with WARN Act Notices and other benefits, Defendant

acted willfully and cannot establish that it had any reasonable grounds or basis for believing its actions were not in violation of the statute.

RULE 23 CLASS ACTION ALLEGATIONS

19. Plaintiff brings this WARN Act claim as a Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following Nationwide class:

> All employees of Defendant who were terminated pursuant to a mass layoff or plant closing (as those terms are defined in the WARN Act) within 90 days of May 21, 2024.

20. Class Action treatment of WARN Act claims is appropriate because all of Federal Rule of Civil Procedure 23's Class Action requisites can be satisfied. For example:

a. The class includes, upon information and belief, over 50 class members, and, as such, is so numerous that joinder of all the class members is impracticable under these circumstances, thereby satisfying Federal Rule of Civil Procedure 23(a)(1).

b. Questions of law and fact are common to the class, including, *inter alia*, whether Defendant provided adequate notice of its mass layoff under the WARN Act, 29 U.S.C. § 2102. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(2).

c. Plaintiff is a member of the class, whose claims are typical of the claims of other class members. Plaintiff has no interests that are antagonistic to or in conflict with the interests of other class members. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(3).

d. Plaintiff will fairly and adequately represent the class and its interests. Moreover, Plaintiff has retained competent and experienced counsel who will effectively

represent the interests of the class. Thus, Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(4).

21. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications. This would establish incompatible standards of conduct for Defendant and/or because adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party class members.

22. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendant acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and the class as a whole.

23. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any question affecting only individual class members, and because a Class Action is superior to other available methods for the fair and efficient adjudication for this litigation.

VIOLATIONS OF THE WARN ACT, 29 U.S.C. §§ 2101, *et seq*.
COUNT I
(WARN Act)
(*On behalf of Plaintiff and the Putative Class)*

24. Plaintiff re-alleges and incorporates all preceding paragraphs as if set forth in full here.

25. Defendant is an "employer" within the meaning of the WARN Act, 29 U.S.C § 2101(a)(1).

26. Plaintiff and the putative class members were, at all relevant times, "affected employees" within the meaning of the WARN Act, 29 U.S.C § 2101(a)(5).

27. The May 21, 2024, permanent layoffs of at least 4,072 employees at the Facility resulted in "employment losses" as defined in 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II) for at least 33 percent of the employees and at least 50 employees.

28. For purposes of 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II), the Facility constitutes a single site of employment in that each employee's facility was the location to which relevant employees were assigned as their home base, the place from which their work was assigned, and the place to which they reported for work.

29. The WARN Act requires employers to provide 60-days' notice of any plant closing or mass layoff "to each representative of the affected employees . . . or, if there is no such representative at that time, to each affected employee," 29 U.S.C. § 2102(a)(1), and "to the State or entity designated by the State to carry out rapid response activities under [29 U.S.C. §] 3174(a)(2)(A)," as well as to "the chief elected official of the local government within which such closing or layoff is to occur," 29 U.S.C. § 2102(a)(2).

30. On information and belief, prior to May 21, 2024, Defendant did not give any written notice of the plant closing and/or mass layoff to any "affected employee," including Plaintiff and the putative class, as that term is defined in 29 U.S.C § 2101(a)(5). Nor upon information and belief did Defendant give any prior written notice to the Texas state agency, or to the chief elected official of the local government within which the mass layoff was ordered. Rather, Defendant waited after announcing the mass layoffs already occurred to do so.

31. Defendant violated the WARN Act by failing to give timely written notice of the mass layoff as required by 29 U.S.C. § 2102(a), which began on or about May 21, 2024.

32. As such, Plaintiff and the putative class are "aggrieved employees" within the meaning of the WARN Act, 29 U.S.C. § 2104(a)(7).

33. The WARN Act expressly permits an "aggrieved employee" to bring a civil action individually and on behalf of the putative class to seek relief for violations of the provisions of 29 U.S.C. § 2102. See 29 U.S.C. § 2104(5).

34. Moreover, Defendant's violations of the WARN Act were not in good faith, and Defendant had no reasonable grounds for believing that the plant closing or mass layoff it ordered was not in violation of the notice requirements at 29 U.S.C. § 2102.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for the following relief:

1. Certification of the Class as a Class Action pursuant to Federal Rule of Civil Procedure 23(b), and designation of Plaintiff as a representative of the Class and counsel of record as Class Counsel.

2. A declaration that Defendant has violated the WARN Act;

3. A first priority administrative expense claim against Defendant pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiff and the other similarly-situated former employees equal to the sum of their: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other COBRA benefits, for 60 days, that would have been covered and paid under the then-applicable employee benefits had that coverage

continued for that period, all determined in accordance with the WARN Act, or alternatively, determining that the first $15,150 of the WARN Act claims of the Plaintiff and each of the other similarly-situated former employees are entitled to priority status under 11 U.S.C. § 507(a)(4)-(5), and the remainder is a general unsecured claim;

4. A judgment against Defendant and in favor of Plaintiff and the putative class for back pay to the fullest extent permitted by the WARN Act, 29 U.S.C. § 2104(a)(1)(A).

5. A judgment against Defendant and in favor of Plaintiff and the putative class for the loss of benefits, including, but not limited to, medical expenses incurred by Plaintiff and the putative class during the employment loss, to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(1)(B).

6. A finding that Defendant's violations of the WARN Act was willful, not in good faith, and that Defendant had no reasonable grounds for believing that its mass layoff was not in violation of the notice requirements of the WARN Act, 29 U.S.C. § 2102.

7. A judgment against Defendant and in favor of Plaintiff and the putative class for litigation costs, expenses, attorney's fees to the fullest extent permitted under the WARN Act, 29 U.S.C. § 2104(a)(6), and for discretionary costs pursuant to Federal Rule of Civil Procedure 54(d);

8. A judgment against Defendant for civil penalties to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(3); and,

9. Such other and further relief as this Court deems just and proper and allowed under the WARN Act.

This 17th day of June 2024.

Respectfully submitted,

J. Gerard Stranch, IV*
(Lead Counsel)
Michael C. Iadevaia*
STRANCH, JENNINGS, & GARVEY, PLLC
223 Rosa Parks Ave. Suite 200
Nashville, TN 37203
Telephone: 615/254-8801
Facsimile: 615/255-5419
gstranch@stranchlaw.com
miadevaia@stranchlaw.com

By: */s/ Matthew S. Okin*
Matthew S. Okin
Texas Bar No. 00784695
David L. Curry, Jr.
Texas Bar No. 24065107
OKIN ADAMS BARTLETT CURRY LLP
1113 Vine St., Suite 240
Houston, Texas 77002
Telephone: 713.228.4100
Facsimile: 346.247.7158
mokin@okinadams.com
dcurry@okinadams.com

Samuel J. Strauss*
Raina C. Borrelli*
STRAUSS BORRELLI, PLLC
613 Williamson St., Suite 201
Madison, WI 53703
T: (608) 237-1775
F: (608) 509-4423
sam@straussborrelli.com
raina@straussborrelli.com

Lynn A. Toops*
Amina A. Thomas*
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, Indiana 46204
(317) 636-6481
ltoops@cohenandmalad.com
athomas@cohenandmalad.com

* *Pro Hac Vice* applications to be submitted

Counsel for Plaintiff and the Proposed Class