SO ORDERED,

Judge Selene D. Maddox

United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: UNITED FURNITURE INDUSTRIES, INC.	**CASE NO.: 22-13422-SDM**
DEBTOR	**CHAPTER 11**
TORIA NEAL **PLAINTIFF**	
v.	**ADV. PRO. NO.: 23-01005-SDM**
UNITED FURNITURE INDUSTRIES, INC. **DEFENDANT**	

ORDER GRANTING MOTION TO APPOINT INTERIM CO-LEAD COUNSEL AND CONSOLIDATING ADVERSARY PROCEEDINGS

The Plaintiff, Toria Neal, filed a *Motion for Appointment of Interim Co-Lead Counsel, Consolidation of Cases, and Establishment of Procedures for Consolidation of Future-Filed Cases* (the "Motion for Appointment")(A.P. Dkt. #6) along with a *Memorandum of Law in Support* (the "Supporting Memorandum")(A.P. Dkt. #7). In summary, the Motion for Appointment and Supporting Memorandum requests that this Court appoint the law firms of Langston & Lott, PLLC ("L&L") and The Hearn Law Firm, PLLC ("Hearn") to serve as interim co-lead counsel concerning the ongoing adversary proceeding against Defendant's, United Furniture, Inc. ("UFI"),

alleged violation of the WARN Act, 29 U.S.C. § 2101, et seq.[1] The Court conducted a hearing on April 18, 2023, at which the Court heard arguments from attorneys at both L&L and Hearn.[2] At the conclusion of the hearing, the Court took the matter under advisement, and then on June 20, 2023, issued its bench ruling. This Order incorporates and supplements that bench ruling, including any factual findings and legal conclusions.

Based on the relevant legal standard for appointment of interim lead counsel and other facts and circumstances concerning the WARN Act Litigation currently pending before this Court, the Court is of the opinion that L&L and Hearn should be appointed as co-lead interim counsel of the prospective class. As articulated in the Court's bench ruling, the Court is also of the opinion that the four pending adversary proceedings should be substantively consolidated, with the lead adversary proceeding being *Neal v. United Furniture Industries, Inc.*, A.P. No. 23-01005-SDM. To facilitate judicial economy, this Order will address all arguments made by the respective counsel and law firms in each adversary proceeding and will be entered of record in *Neal v. UFI*. Orders referencing and implementing this Order will be entered in each adversary proceeding and

[1] There are currently four pending adversary proceedings, all of which allege similar (if not the same) causes of action against the Defendant for alleged violations of the WARN Act. In addition to this adversary proceeding, the three other pending adversary proceedings are as follows: A.P. Nos. 23-01001-SDM; 23-01002-SDM; and 23-1007-SDM. Of note, Hearn filed A.P. No. 23-1007-SDM on behalf of several plaintiffs, but later, L&L and Hearn requested to be appointed co-lead interim counsel. L&L and Hearn also requested consolidation of all adversary proceedings with this adversary proceeding, A.P. No. 23-01005-SDM, being the "lead" proceeding. For ease of reference, the pending litigation in all adversary proceedings will be referred to as the "WARN Act Litigation".

[2] In addition to arguments from L&L and Hearn, the Court also heard arguments from Raisner Roupinian LLP ("Raisner") (counsel for the plaintiffs in A.P. No. 23-01001) and the Craig M. Geno and Don Barrett Law Firms (respectively, "Geno" and "Barrett") (counsel for the plaintiff in A.P. No. 23-01002). Like L&L and Hearn, Geno and Barrett also sought a "co-lead" interim counsel appointment. The Court also considered arguments made by the Chapter 11 Trustee, which will be addressed below in this Order.

the underlying UFI bankruptcy case—Case No. 22-13422-SDM. As footnoted above, each law firm and respective counsel filed a motion and briefed the pertinent facts and legal standard, and the Court will briefly summarize the procedural history, facts, and arguments as filed in each adversary proceeding.

Raisner: Dominic Alcantara et al v. United Furniture Industries, Inc.; A.P. No. 23-01001-SDM

Raisner filed the *Complaint* in *Alcantara* on January 3, 2023. (A.P. Dkt. #1). Raisner filed its *Motion for Appointment of Interim Class Counsel and Related Relief* (A.P. Dkt. # 24) and its *Brief in Support* (A.P. Dkt. #25). Later, it filed an *Amended Motion* and *Supporting Brief* at A.P. Dkt. #s 31 and 32. The Chapter 11 Trustee filed his *Response* at A.P. Dkt. #35, and Geno filed his *Response* at A.P. Dkt. #38. Raisner filed *Replies* to both Responses at A.P. Dkt. #s 39 and 40. After the Court conducted a hearing on April 18, 2023, Raisner filed a *Notice of Supplemental Authority* (A.P. Dkt. #43), mainly to update the Court regarding a decision made by the district court in California regarding ongoing litigation against non-Debtor parties for violations of the WARN Act.

Raisner advanced several arguments for why the Court should appoint interim class counsel and why it should be selected. To begin, Raisner argued that it would streamline the four adversary proceedings against UFI arising out of the same course of events. According to Raisner, an appointment ensures immediate due process protection for the employees, efficient estate administration, and management over the cost and expense related to the WARN Act Litigation. As to why it should be selected as interim class counsel, Raisner argued applicable experience litigating WARN Act claims and knowledge of the law. In short, Raisner asserted that it is the only law firm that exclusively represents employees affected by mass layoffs and/or shutdowns and has done so for over thirty years. Specifically, attorneys Raisner and Roupinian have been appointed

interim class counsel in 10 bankruptcy cases and class counsel in roughly 150 other bankruptcy cases. In other words, Raisner argued that no other law firm has as much experience or knowledge representing plaintiffs concerning the WARN Act in bankruptcy courts, district and appellate courts. As to work already performed related to this WARN Act Litigation or other related litigation, Raisner argued that its initiation of class action litigation in a California district court against non-Debtors Stage Capital LLC and David Belford, coupled with prior legal and factual research, claim evaluations, etc. in this WARN Act Litigation, make it the obvious choice for interim class counsel appointment.

Geno and Barrett: Frances Denise Alomari v. United Furniture Industries, Inc.; A.P. No. 23-01002-SDM

Geno and Barrett filed a *Complaint* in *Alomari* on January 6, 2023. (A.P. Dkt. #1). Later, Geno and Barrett filed their *Motion for Appointment of Interim Co-Lead Class Counsel, Consolidation of Cases, and Establishment of Procedures for Consolidation of Future-Filed Cases* (A.P. Dkt. #6) along with an accompanying *Memorandum of Law* (A.P. Dkt. #7). Geno and Barrett also filed amended pleadings at A.P. Dkt. #s 23, 24, 27, and 28. The Chapter 11 Trustee filed his *Response* at A.P. Dkt. #33, and Raisner filed its *Response* and then an *Amended Response* and *Brief in Support of the Response* at A.P. Dkt. #s 35, 40, and 41, respectively. The Chapter 11 Trustee also filed a *Supplemental Response* at A.P. Dkt. #42. Geno and Barrett filed an *Omnibus Response* at A.P. Dkt. #47, countering arguments made by Raisner and the Chapter 11 Trustee. Like the *Alcantara* adversary proceeding, Raisner filed its *Notice of Supplemental Authority* after the hearing on April 18, 2023. (A.P. Dkt. #51).

Geno and Barrett arguments for their appointment as interim co-lead class counsel focused on Geno's extensive bankruptcy litigation experience and Barrett's experience in class action litigation. In addition, Geno and Barrett argued that their firms could expend the financial and

human resources necessary to effectively represent the proposed class. Geno and Barrett argued that their appointment as interim class counsel would promote efficiency in that they would make every executive and strategy decision, institute mandatory time and expense reporting protocols, only allow work as assigned by co-lead counsel, and limit attendance at hearings and depositions to only those necessary attorneys and other professionals. Further, Geno and Barrett argued for consolidation of adversary proceedings in order to promote more efficiency for discovery and trial purposes.

L&L and Hearn: Toria Neal v. United Furniture Industries, Inc.; A.P. No. 23-01005-SDM; Hutchins et al v. United Furniture Industries, Inc.; A.P. No. 23-01007-SDM

In *Neal*, L&L filed the *Complaint* on January 24, 2023. (A.P. Dkt. #1). Shortly after on January 7, 2023, L&L filed its Motion for Appointment (A.P. Dkt. #6) and Supporting Brief (A.P. Dkt. #7). Raisner filed its *Response* (A.P. Dkt. #20) and *Amended Response and Brief in Support* (A.P. Dkt. #s 25, 26). The Chapter 11 Trustee also filed a *Response* at A.P. Dkt. #18 and *Amended Response* at A.P. Dkt. #28. In *Hutchins*, Hearn filed the *Complaint* on January 26, 2023 (A.P. Dkt. #1). Like the other pending adversary proceedings, Raisner filed a *Motion for Appointment of Interim Class Counsel and Related Relief* (A.P. Dkt. # 11) and its *Brief in Support* (A.P. Dkt. #12) and later amended those pleadings at A.P. Dkt. #s 16 and 17. Later, Hearn filed its own *Motion for Appointment of Interim Co-Lead Counsel, Consolidation of Cases, and Establishment of Procedures for Consolidation of Future-Filed Cases* (A.P. Dkt. #25) and *Memorandum in Support* (A.P. Dkt. #29). After the hearing on April 18, 2023, Raisner filed its *Notice of Supplemental Authority* (A.P. Dkt. #30).

As stated above, L&L and Hearn sought appointment of interim counsel as "co-lead" counsel and argued in their pleadings and at the hearing the basis for such a request. Specifically, as to this WARN Act Litigation, they argued that at the time of the hearing, L&L and Hearn

represented over half of the potential class at approximately 1,450 plaintiffs across Mississippi, North Carolina, and California. According to L&L and Hearn, they assessed claims of potential plaintiffs and causes of action shortly after UFI terminated its workforce. Further, L&L and Hearn were the first and second firms to file a class action complaint in the United States District Court for the Northern District of Mississippi.

As to prior experience, L&L highlighted its complex and high-profile complex class action in the mass tort, which included asbestos, tobacco, oil spills, and other pharmaceutical and product liability cases. As to Hearn, L&L argued that attorneys Phillip Hearn and Mike Farrell[3] have practiced in employment law with over 30 years and 49 years of experience, respectively. According to L&L, Mike Farrell was successful in certifying a class of plaintiffs in a WARN Act case in the Southern District of Mississippi and ultimately received a judgment in favor of that plaintiff class. Like Geno and Barrett, L&L and Hearn argued for consolidation of the adversary proceedings due to the complaints in each adversary proceeding giving rise to identical factual and legal questions all arising from UFI's termination of its workforce around November of 2022.

Chapter 11 Trustee's Position

In each adversary proceeding, the Chapter 11 Trustee's responses were the same: appointment of interim counsel is premature and potentially unnecessary. Further, the Chapter 11 Trustee argued that there were other procedural avenues to handle the prospective class's claims, e.g., through the proof of claims process. The Chapter 11 Trustee also made clear that he took no position on which attorneys or law firms were better qualified to represent the putative class.

[3] Based on the pleadings and oral arguments at the hearing on April 13, 2023, it is apparent to the Court that L&L and Hearn have associated with Mike Farrell and his law firm, The Law Offices of Mike Farrell PLLC, to assist in prosecuting the WARN Act Litigation.

Whether the WARN Act Litigation ultimately proceeds as a class action under Rule 23, the Chapter 11 Trustee's main concern was not unnecessarily burdening the bankruptcy estate.

Brief Discussion on the Appointment of Interim Co-Lead Counsel and Consolidation of Adversary Proceedings.

The standard for the appointment of interim lead counsel for a prospective class action proceeding is straightforward. But as discussed more below, applying the standard to determining which law firms and/or attorneys should be appointed as interim lead counsel for this WARN Act Litigation proved difficult. Rule 23(g)(3) of the Federal Rules of Civil Procedure, made applicable to adversary proceedings under Rule 7023 of the Federal Rules of Bankruptcy Procedure, permits this Court to appoint interim class counsel to act on behalf of the putative class before determining whether to certify the action as a class action. If only one applicant seeks appointment as class counsel, courts must only determine whether the applicant is "adequate" under Rule 23(g)(1) and (4). *In re MF Global Holdings, Ltd.*, 464 B.R. 619, 624 (Bankr. S.D. N.Y. 2012). But if more than one applicant seeks appointment (as is the case before this Court), courts must "appoint the applicant that is *best able* to represent the interests of the class." Fed. R. Civ. P. 23(g)(2) (emphasis added).

In general, courts consider the same factors used in determining the adequacy of class counsel upon certification under Rule 23(g)(1)(A). *In re TransCare Corp.*, 552 B.R. 69, 79 (Bankr. S.D.N.Y. 2016) (internal citations omitted). The factors are: (1) the work done by counsel to identify and/or investigate potential claims in the action; (2) counsel's experience in complex litigation, class actions, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g). Courts may also consider any other matters pertinent to counsel's ability to fairly and adequately represent the prospective class's interests. *Id.*

After thoroughly considering the factors, the Court finds that Rule 23(g) favors the appointment of the law firms of L&L and Hearn as interim co-lead counsel. The Court considered every motion, brief, and even supplemental authority, filed by the parties. The Court reviewed each C.V., each attorney's previous litigation experience in complex or class action litigation, and the work performed so far in the WARN Act Litigation by the respective law firms leading up to its decision. After review of the enumerated factors in Rule 23(g), the Court is convinced that each law firm and attorneys vying for appointment would sufficiently represent the putative class. As discussed in the Court's bench ruling, however, the Court's task under the facts and circumstances of this WARN Act Litigation was to determine which law firm and/or firms would be *best able* to represent the potential class.

Each law firm has experience in class action litigation. Raisner has substantial prior experience litigating WARN Act claims inside and outside of bankruptcy court. Geno and Barrett bring both bankruptcy litigation experience and other types of tort class action experience. L&L and Hearn also bring substantial experience litigating class actions and employment matters, including WARN Act claims. No party, including the Court, can take issue with the breadth of experience each attorney would bring to this WARN Act Litigation. Further, each law firm has performed prior work in some way concerning the underlying UFI bankruptcy case in this Court and/or has performed work to further WARN Act claims in other courts.

At the end of the day, the Court was persuaded that L&L and Hearn would be best able to represent the putative class using pertinent factors enumerated in Rule 23(g) and other relevant factors. The Court considered practical realities like the geographic location of the law firms—L&L has multiple offices in the Northern District of Mississippi that could easily serve many of the putative class who were terminated from UFI's operation(s) in Mississippi. The Court also

considered and found persuasive that L&L and Hearn could best represent the putative class due to the number of plaintiffs L&L and Hearn already represented at the time of the hearing in April of 2023. With approximately 1,500 plaintiffs, the Court is convinced that L&L and Hearn conducted an extensive investigation and ground operation in investigating facts, recruiting plaintiffs in a diligent manner, and advancing any potential claims. As argued at the hearing and in the pleadings, L&L and Hearn were the first and second to file district court actions in Mississippi. These facts further go to support the Court's decision on which law firms and attorneys positioned themselves well to best represent any potential class going froward in this WARN Act Litigation.

In addition to considering the merits of each law firm and attorneys, the Court also considered the Chapter 11 Trustee's position and found: (1) sufficient time had passed since the hearing in April of 2023, and the UFI bankruptcy case had developed to a point that any argument for delay based on case developments was moot; (2) it was not proper for the Court to consider the merits of the causes of action in the adversary proceedings (including defenses, exceptions, or the availability of recovery) as a basis for whether interim lead counsel should be appointed; and (3) other cases cited by the Chapter 11 Trustee (e.g., *Angles v. Flexible Flyer Liquidating Trust (In re FF Acquisition Corp.),* 438 B.R. 886 (N.D. Miss. Bankr. 2010) and *Kusnick v. LMCHH PC, LLC (In re: LMCHH PCP, LLC),* Adv. Pro. No. 17-1021 (E.D. La 2017)) to suggest case management recommendations did not sufficiently represent the particular facts and circumstances surrounding this WARN Act Litigation. Like the Chapter 11 Trustee, the Court is also concerned about effective and efficient management of this WARN Act Litigation, and the Court expects the newly appointed interim co-lead counsel to focus on this aspect during the pendency of this adversary proceeding.

Substantive Consolidation

Courts have broad discretion to determine whether consolidation of actions sharing common questions of law and fact is appropriate. *In re TransCare Corp.*, 552 B.R. at 77. Rule 42 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Rule 7042 of the Federal Rules of Bankruptcy Procedure, governs consolidation of adversary proceedings. Rule 42 provides that if actions before a court involve a common question of law or fact the court may consolidate the actions. Fed. R. Civ. P. 42. To promote judicial economy and in the interests of justice, the Court finds that the fact and legal issues as pled in the respective complaints in each of the pending adversary proceedings warrant a consolidation, as opposed to dismissal, of the adversary proceedings. The Court need not belabor this point as multiple law firms recommended such a consolidation in their respective pleadings. While the Court understands that each law firm not selected as interim counsel may have to coordinate with certain aspects of the WARN Act Litigation, this would have been the situation no matter which law firm(s) was selected due to either the number of plaintiffs currently represented by certain law firms or outside litigation currently pending in other district courts.

In conjunction with the consolidation issue, the Court also considered the Chapter 11 Trustee's additional "case management" recommendations, in addition to other parties' recommendations on consolidation, concerning (1) bifurcation of liability and damages or "liability and relief" and (2) bifurcation and deferment on consideration of state law claims. At this juncture, the Court will defer any ruling on such bifurcation and give the newly appointed interim co-lead class counsel time to discuss any case management issues, including discovery recommendations with opposing counsel and present any further arguments by motion.

In summary, after consideration of the factors and other practical realities of this WARN Act Litigation, the Court is convinced that Langston & Lott, PLLC and The Hearn Law Firm, PLLC and their respective attorneys should serve as interim co-lead class counsel. Further, the Court is of the opinion that the adversary proceedings should be substantively consolidated with this adversary proceeding (*Neal v. UFI*, 23-01005-SDM). It is, therefore, **ORDERED** that:

1. The *Motion for Appointment of Interim Co-Lead Counsel, Consolidation of Cases, and Establishment of Procedures for Consolidation of Future-Filed Cases* (A.P. Dkt. #6) is hereby **GRANTED**;
2. Langston & Lott, PLLC and The Hearn Law Firm, PLLC shall be appointed as interim co-lead counsel for the prospective class; and
3. The adversary proceedings *Alcantara v. UFI*, 23-01001-SDM, *Alomari v. UFI*, 23-01002, and *Hutchins v. UFI*, 23-01007, and are hereby substantively consolidated with this adversary proceeding for all procedural and substantive purposes, including all filings, pleadings, discovery, including pretrial motions, and trial.

##END OF ORDER##