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The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 10, 2009

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re	§	
	§	Chapter 11
PILGRIM'S PRIDE CORPORATION,	§	
<i>et al.,</i>	§	Case No. 08-45664 (DML)
	§	
Debtors.	§	JOINTLY ADMINISTERED

REPORT AND RECOMMENDATION

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Comes now the undersigned bankruptcy judge and, *sua sponte*, makes the following report and recommendation:

1. Certain lead plaintiffs ("Plaintiffs")¹ commenced litigation prepetition that is pending in the United States District Court for the Western District of Arkansas, El Dorado Division (the "Arkansas Court"). That litigation is styled *Fair Labor Standards Act multidistrict litigation*, MDL Docket No. 1:07-cv-

¹ I use the defined term "Plaintiffs" to refer to all plaintiffs in the MDL Suit (as defined below), not just those who commenced the action.

1832 (the “MDL Suit”). Plaintiffs have also filed proofs of claim² in the captioned chapter 11 case. Such proofs of claim assert the same damages as are sought in the MDL Suit.³

2. On February 5, 2009, Plaintiffs in the MDL Suit filed their *Fair Labor Standards Act Multidistrict Litigation Plaintiffs’ Motion for Relief from the Automatic Stay* (the “Stay Motion”), by which they sought relief from the automatic stay of 11 U.S.C. § 362(a) in order to proceed to trial of the MDL Suit. At a hearing respecting the Stay Motion, I expressed my concern that the MDL Suit could not be tried by the Arkansas Court before mid-2010. Debtors have advised me that they anticipate filing a plan of reorganization that will reach the stage of confirmation prior to the end of 2009. The Transfer Motion (as hereafter defined) does not seek transfer of the Stay Motion, and it is my present intention to retain jurisdiction over the Stay Motion.
3. On July 7, 2009, Debtors filed *Debtors’ Motion to Estimate FLSA Claims* (the “Estimation Motion”). The Estimation Motion together with related proceedings is presently pending as a contested matter before me. *See* FED. R. BANKR. P. 9014.

² Identified as the MDL Master Proof of Claim in the Estimation Motion (as hereafter defined), one proof of claim was filed on behalf of Plaintiffs. That claim is filed as claim number 4972. In addition to the MDL Master Proof of Claim, thirty-three of the Plaintiffs filed corresponding proofs of claim, which are numbered: 5190, 5011, 4618, 5576, 5195, 5082, 5197, 4595, 4969, 5577, 5288, 4593, 5194, 4616, 4619, 5578, 5014, 5286, 5196, 5199, 5287, 4603, 5012, 5198, 5015, 2453, 4621, 5285, 5013, 4597, 4963, and 5284.

³ The MDL Suit asserts claims under the Fair Labor Standards Act (the “FLSA”), 29 U.S.C. §§ 201 *et. seq.*

4. By the Estimation Motion, Debtors ask that the claims asserted by Plaintiffs be estimated for all purposes, including distribution, pursuant to 11 U.S.C. § 502(c).⁴ If the claims are estimated for all purposes as requested by the Estimation Motion, the MDL Suit will effectively be mooted. On the other hand, section 502(c) contemplates abbreviated procedures to allow quick liquidation of claims. *In re Brints Cotton Marketing, Inc.*, 737 F.2d 1338, 1341 (5th Cir. 1984). Thus, while trial of the MDL Suit could not occur before Debtors' anticipated confirmation hearing, Plaintiffs' claims could be liquidated and allowed under section 502(c) prior to that time.⁵ I have granted the estimation motion in part, but have not addressed relief relating to procedures to be used in estimating Plaintiffs' claims.
5. On August 4, 2009, I entered an amended order, *sua sponte*, making FED. R. BANKR. P. 7087 applicable to the Estimation Motion and related proceedings. *See* Rule 9014(c), allowing the court to make applicable in a contested matter rules applicable in adversary proceedings that are not automatically applicable in a contested matter. Rule 7087 states:

On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412, except as provided in Rule 7019(2).

⁴ On August 7, 2009, Debtors filed their *Debtors' First Omnibus Objection (No Liability and Section 507)—FLSA MDL Plaintiffs' Claims*. Reference to proceedings related to the Estimation Motion includes the dispute represented by the claims and objections.

⁵ Though the damages sought by Plaintiffs are not, in the aggregate, necessarily material to Debtors' ability to reorganize, given the size of Debtors' cases, the nature of Plaintiffs' claims may require that all or most of them be satisfied under a plan in cash (*see* 11 U.S.C. § 1129(a)(9)(A) and (B)). The cash needed to satisfy Plaintiffs' claims may be enough to impair Debtors' post-confirmation cash position. Thus, I am of the opinion that it is very likely necessary that Plaintiffs' claims be liquidated before Debtors' plan may be confirmed. *See* 11 U.S.C. § 1129(a)(11).

6. On September 9, 2009 Debtors and Plaintiffs jointly filed their *Agreed Motion to Transfer Venue of the FLSA MDL Claims* (the “Transfer Motion”). By the Transfer Motion, the parties ask that the Estimation Motion and related proceedings be transferred to the Arkansas Court. I have (with the knowledge and consent of parties) contacted Hon. Harry F. Barnes, the District Judge presiding over the MDL Suit, and I understand that Judge Barnes does not object to the transfer to the Arkansas Court of the Estimation Motion and related proceedings. The Arkansas Court has overseen extensive proceedings in connection with the MDL Suit. Furthermore, the Arkansas court has considerable experience in suits arising under the FLSA.
7. Disposition of a motion under Rule 7087 is in the discretion of the court. *See* FED. R. BANKR. P. 7087 (“On motion and after a hearing, the court *may* transfer ...” (emphasis added)); 10 COLLIER ON BANKRUPTCY ¶ 7087.01 (15th ed. rev. 2009) ; *Enron Corp. v. Arora (In re Enron Corp.)*, 317 B.R. 629, 638 (Bankr. S.D.N.Y. 2004). The decision whether to grant such a motion is based on whether the interests of justice or the convenience of the parties will be thus served.⁶ In considering the interests of justice, courts take account of how best to administer the bankruptcy estate efficiently, judicial economy, fairness and timeliness. *See* 10 COLLIER ON BANKRUPTCY ¶ 7087.02 (15th ed. rev. 2009); *Burns v. Grupo Mex. S.A. De C.V.*, 2007 U.S. Dist. Lexis 84514, at *15 (S.D.N.Y. 2007); *Norton v. Encompass Servs. Corp.*, 301 B.R. 836, 839 (S.D. Tex. 2003). Convenience of the parties turns on mutual – as opposed to one party’s – convenience. *See Norton*, 301 B.R. at 839.

⁶ *See* 28 U.S.C. § 1412.

8. In the case of the Estimation Motion, that the Transfer Motion is pressed jointly suggests that transfer to the Arkansas Court will serve the convenience of all of the parties. In addition, transfer to the Arkansas Court, given its experience with the FLSA and the MDL Suit, would clearly be consistent with judicial economy and would be fair to the parties. The parties have agreed to a discovery plan that will allow trial of the Estimation Motion on a schedule consistent with Debtors' expectations regarding plan confirmation, and thus transfer to the Arkansas Court will aid the efficient administration of Debtors' estates. In sum, I believe the Transfer Motion should be granted.
9. Arguably, a bankruptcy court may direct transfer of a proceeding pursuant to Rule 7087. Fed. R. Bankr. P. 9001(4) provides that as "used in [the] rules [of bankruptcy procedure] . . . 'court' . . . means the judicial officer before whom a case or proceeding is pending." As Rule 7087 provides for transfer by "the court," and as I am the judicial officer before whom the Estimation Motion and related proceedings are pending, within the meaning of the rule, I have the authority to grant the Transfer Motion. However, the statute governing transfer of the Estimation Motion (which is specifically referenced in Rule 7087), 28 U.S.C. § 1412, provides:

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

28 U.S.C. § 1412 (emphasis added). Although not uniformly so, title 28 often distinguishes between the bankruptcy court and the District Court. *See, e.g.*, 28 U.S.C. §§ 154(b), 157(b),(c) and (d) and 159(a). Therefore, out of an

abundance of caution and because of the unusual nature of the relief sought in the Transfer Motion, I have concluded that it is preferable that that motion be ruled upon, as provided in section 1412, by the District Court.

10. For the reasons stated above, I respectfully recommend that the reference be withdrawn with respect to the Estimation Motion and related proceedings and that the Transfer Motion be granted by the District Court and the Estimation Motion and related proceedings be transferred to the Arkansas Court.

Respectfully submitted,

/s/ D. Michael Lynn

D. Michael Lynn
United States Bankruptcy Judge