

ORIGINAL

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

JEVIC HOLDING CORP., *et al.*,

Debtors.

CASIMIR CZYZEWSKI, MELVIN L. MYERS, JEFFREY
OEHLERS, ARTHUR E. PERIGARD, and DANIEL C.
RICHARDS on behalf of themselves and all others similarly
situated,

Plaintiffs.

v.

JEVIC TRANSPORTATION, INC., JEVIC HOLDING
CORP., CREEK ROAD PROPERTIES, LLC, SUN
CAPITAL PARTNERS, INC., and JOHN DOE'S 1-10,

Defendants.

CHAPTER 11

Case No. 08-11008 (BLS)
(Jointly Administered)

Adv. Pro. No. 08-50662 (BLS)

AMENDED CLASS ACTION ADVERSARY PROCEEDING COMPLAINT

Plaintiffs Casimir Czyzewski, Melvin L. Myers, Jeffrey Oehlers, Arthur E. Perigard and Daniel C. Richards ("Plaintiffs") allege on behalf of themselves and a class of similarly situated former employees of Defendants, by way of their Complaint against Jevic Transportation, Inc., Jevic Holding Corp., Creek Road Properties, LLC ("Debtors") Sun Capital Partners, Inc., and John Doe's 1-10 (with Debtors, hereinafter referred to as "Defendants") by and through their counsel allege as follows:

NATURE OF THE ACTION

1. The Plaintiffs bring this action on behalf of themselves, and other similarly situated former employees who worked for Defendants and who were terminated without cause, as part of, or as the result of, plant closings ordered by Defendants and who were not provided 60 days advance written notice of their terminations by Defendants, as required by the Worker Adjustment and Retraining Notification Act (“WARN Act”), 29 U.S.C. § 2101 et. seq. and by the New Jersey Millville Dallas Airmotive Plant Job Loss Notification Act, PL. 2007, c.212, C.34:21-2 (“New Jersey WARN Act”).

2. Plaintiffs and all similarly situated employees seek to recover 60 days wages and benefits, pursuant to the WARN Act, from Defendants. The New Jersey Plaintiffs and similarly situated employees in New Jersey seek to recover lost wages, benefits and other remuneration, including severance pay equal to one week of pay for each full year of employment. All the Plaintiffs’ claims, as well as the claims of all similarly situated employees, are entitled to first priority administrative expense status pursuant to the United States Bankruptcy Code § 503(b)(1)(A).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1331, 1334 and 1367 and 29 U.S.C. § 2104(a)(5).

4. This Court has original jurisdiction over all claims in this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). This is a putative class action in which: (1) there are 100 or more members in the Plaintiffs’ proposed class; (2) at least some members of the proposed class have a different citizenship from Defendant; and (3) the claims of the proposed class members exceed \$5,000,000.00 in the aggregate.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O)
6. Venue is proper in this District pursuant to 29 U.S.C. § 2104(a)(5).

THE PARTIES

Plaintiffs

7. Plaintiff Casimir Czyzewski, Jr., was employed by Defendants and worked at the Defendants' facility located at 600-700 Creek Road, Delanco, New Jersey (the "Delanco Facility") until his termination on or about May 19, 2008.

8. Plaintiff Melvin L. Myers was employed by Defendants and worked at the Defendants' facility located at 5340 W. 161 Street, Brook Park, Ohio (the "Brook Park Facility") until his termination on or about May 19, 2008.

9. Plaintiff Jeffrey Oehlers was employed by Defendants and worked at the Defendants' facility located at 600-700 Creek Road, Delanco, New Jersey (the "Delanco Facility") until his termination on or about May 19, 2008.

10. Plaintiff Arthur E. Perigard was employed by Defendants and worked at the Defendants' facility located at 6 Pioneer Drive, North Oxford, Massachusetts (the "North Oxford Facility") until his termination on or about May 20, 2008.

11. Plaintiff Daniel C. Richards was employed by Defendants and worked at the Defendants' facility located at 2900 W. 166th Street, Markham, Illinois (the "Illinois Facility") until his termination on or about May 21, 2008.

Defendants

12. Defendants maintained and operated their corporate headquarters at 600-700 Creek Road, Delanco, New Jersey (the “Delanco Facility or Establishment”) as those terms are defined by the New Jersey WARN Act and the WARN Act, and maintained and operated additional facilities and establishments, as those terms are defined by the WARN Act throughout the United States, including: Brook Park, Ohio; Markham, Illinois; and North Oxford, Massachusetts, (collectively the “Facilities”).

13. Until on or about May 19, 2008, the Plaintiffs and all similarly situated employees were employed by Defendants and worked at or reported to one of the Facilities.

14. Upon information and belief, Debtor Jevic Holding Corp., an affiliate of Defendant Sun Capital Partners, Inc., owns 100% of the common stock of Debtor Jevic Transportation, Inc., and Defendants John Doe’s are individuals who employ the workforce at the Establishments and Facilities.

15. On May 20, 2008, the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code.

CLASS ALLEGATIONS, 29 U.S.C. § 2104

16. Plaintiffs bring this action on their own behalf and pursuant to the WARN Act, and Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all other similarly situated former employees of Defendants who worked at or reported to one of the Facilities and were terminated without cause on or about May 19, 2008, within 30 days of that date, or as the reasonably foreseeable consequence of the mass layoff or plant closings ordered by Defendants on May 19, 2008, pursuant to 29 U.S.C. § 2104(a)(5).

17. On or about May 19, 2008, Defendants terminated the Plaintiffs' employment as part of a mass layoff or a plant closing as defined by 29 U.S.C. § 2101(a)(2), (3), for which he was entitled to receive 60 days advance written notice under the WARN Act.

18. At or about the time the Plaintiffs were terminated, Defendants terminated approximately 1200 other similarly situated employees at the Facilities (the "other similarly situated former employees").

19. Pursuant to 29 U.S.C. § 2104(a)(5), the Plaintiffs maintain this action on behalf of themselves and on behalf of each of the other similarly situated former employees.

20. Each of the other similarly situated former employees is similarly situated to the Plaintiffs with respect to his or her rights under the WARN Act.

21. The Plaintiffs and the other similarly situated former employees are "affected employees" within the meaning of 29 U.S.C. § 2101(a)(5).

22. Defendants were required by the WARN Act to give the Plaintiffs and the other similarly situated former employees at least 60 days advance written notice of their respective terminations.

23. Prior to their termination, neither the Plaintiffs nor the other similarly situated former employees received written notice that complied with the requirements of the WARN Act.

24. Defendants failed to pay the Plaintiffs and the other similarly situated former employees their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 calendar days following their respective terminations and failed to make 401(k) contributions and provide them with health insurance coverage, life insurance coverage,

and other employee benefits under COBRA for 60 calendar days from and after the dates of their respective terminations.

25. Defendants, including John Doe's 1-10, ordered a termination of operations of the New Jersey Establishments or Facilities without notice on or about May 19, 2008 and failed to pay the New Jersey Plaintiffs (Czyzewski and Oehlers) and New Jersey Class Members compensatory damages and costs of the action as required by PL. 2007, c.212, C.34:21-6 of the New Jersey WARN Act.

CLASS ALLEGATIONS, F.R.B.P. 7023 and F.R.C.P. 23

26. Plaintiff sue under Rule 7023 of the Federal Rules of Bankruptcy Procedure, and Rule 23(a) and (b) of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons who worked at or reported to one of Defendants' Facilities and were terminated without cause on or about May 19, 2008, were terminated without cause within 30 days of May 19, 2008, or were terminated without cause as the reasonably foreseeable consequence of the mass layoff or plant closing ordered by Defendants on or about May 19, 2008, and who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5) (the "Class").

27. The persons in the Class identified above ("Class Members") are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

28. There are questions of law and fact common to the Class Members that predominate over any questions affecting only individual members.

29. The claims of the representative party are typical of the claims of the Class.

30. The representative party will fairly and adequately protect the interests of the Class.

31. The Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy – particularly in the context of WARN Act litigation, where individual plaintiffs and class members may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. Further, no Class Member has an interest in individually controlling the prosecution of a separate action under the WARN Act; no litigation concerning the WARN Act has been commenced by any Class Member; and concentrating all the potential litigation concerning the WARN Act rights of the Class Members in this court will avoid a multiplicity of suits, will conserve judicial resources and the resources of the parties and is the most efficient means of resolving the WARN Act rights of all the Class Members.

33. There are questions of law and fact common to the Class Members that predominate over any questions solely affecting individual members of the Class, including but not limited to:

(a) whether the Class Members were employees of Defendant who worked at or reported to Defendant's Facilities;

(b) whether Defendants, as a single employer, terminated the employment of the Class Members without cause on their part and without giving them 60 days advance written notice; and

(c) whether Defendants paid the Class members 60 days wages and benefits as required by the WARN Act.

CLAIMS FOR RELIEF

First Cause of Action – WARN ACT

34. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

35. At all relevant times, Defendants employed more than 100 employees who in the aggregate worked at least 4,000 hours per week, exclusive of hours of overtime, within the United States.

36. At all relevant times, Defendants were an “employer,” as that term is defined in 29 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a), and continued to operate as a business until it decided to order a mass layoff or plant closing at the Facilities.

37. The Defendants constituted a “single employer” of the Plaintiffs and the Class Members under the WARN Act in that, among other things:

- (a) The Defendants shared common ownership;
- (b) The Defendants shared common officers and directors;
- (c) All of the Defendants exercised de facto control over the labor practices governing the Plaintiffs and Class Members, including the decision to order the mass layoff or plant closing at the Facilities;
- d) There was a unity of personnel policies emanating from a common source between Defendants; and
- (e) There was a dependency of operations between Defendants.

38. On or about May 19, 2008, the Defendants ordered a mass layoff, plant closing or termination at the Facilities, as those terms are defined by 29 U.S.C. § 2101(a)(2).

39. The mass layoff or plant closing at the Facilities resulted in “employment losses,” as that term is defined by 29 U.S.C. §2101(a)(2) for at least fifty of Defendants’ employees as well as 33% of Defendants’ workforce at the Facilities, excluding “part-time employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).

40. The Plaintiffs and the Class Members were terminated by Defendants without cause on their part, as part of or as the reasonably foreseeable consequence of the mass layoff or plant closing ordered by Defendants at the Facilities.

41. The Plaintiffs and the Class Members are “affected employees” of Defendants, within the meaning of 29 U.S.C. § 2101(a)(5).

42. Defendants were required by the WARN Act to give the Plaintiffs and the Class Members at least 60 days advance written notice of their terminations.

43. Defendants failed to give the Plaintiffs and the Class members written notice that complied with the requirements of the WARN Act.

44. The Plaintiffs, and each of the Class Members are, “aggrieved employees” of the Defendant as that term is defined in 29 U.S.C. § 2104 (a)(7).

45. Defendants failed to pay the Plaintiffs and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days following their respective terminations, and failed to make the pension and 401(k) contributions and provide employee benefits under COBRA for 60 days from and after the dates of their respective terminations.

46. Since the Plaintiffs and each of the Class Members seek back-pay attributable to a period of time after the filing of the Debtors' bankruptcy petitions and which arose as the result of the Debtors' violation of federal laws, Plaintiffs' and the Class Members' claims against Defendants are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503(b)(1)(A).

47. The relief sought in this proceeding is equitable in nature.

Second Cause of Action - New Jersey WARN Act

48. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

49. At all relevant times, Defendants were individuals or private business entities defined as "employers" under the New Jersey WARN Act and continued to operate as a business until they decided to terminate operations at the Establishment and/or Facilities as defined by PL. 2007, c.212, C.34:21-2.

50. On or about May 19, 2008, the Defendants ordered a termination of operations as defined by PL. 2007, c.212, C.34:21-2.

51. The New Jersey Plaintiffs and the Class Members suffered a termination of employment as defined by PL. 2007, c.212, C.34:21-2, having been terminated by Defendants without cause on their part.

52. Defendants were required by the New Jersey WARN Act to give the New Jersey Plaintiffs and the Class Members at least 60 days advance written notice of their terminations.

53. Defendants failed to give the New Jersey Plaintiffs and the New Jersey Class Members written notice that complied with the requirements of the New Jersey WARN Act.

54. Defendants failed to pay the New Jersey Plaintiffs and each of the New Jersey Class Members their respective lost wages, benefits and other remuneration, including severance pay equal to one week of pay for each full year of employment.

55. The New Jersey Plaintiffs have informed the State of New Jersey Department of Labor and Workforce Development of this action.

56. Since the New Jersey Plaintiffs and each of the New Jersey Class Members seek lost wages, benefits and other remuneration, including severance attributable to a period of time after the filing of the Debtors' bankruptcy petitions and which arose as the result of the Debtors' violation of New Jersey law and the New Jersey Class Members' claims against Defendants are entitled to first priority administrative expense status pursuant to 11 U.S.C. § 503(b)(1)(A).

57. The relief sought in this proceeding is equitable in nature.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of all other similarly situated persons, pray for the following relief as against Defendants, jointly and severally:

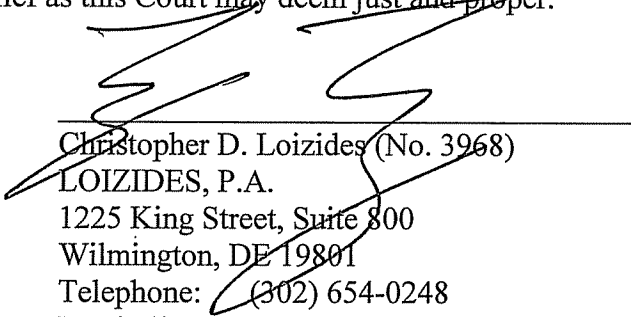
- A. Certification of this action as a class action;
- B. Designation of the Plaintiffs as Class Representatives;
- C. Appointment of the undersigned attorneys as Class Counsel;
- D. A first priority administrative expense claim against the Debtors pursuant to 11 U.S.C. § 503(b)(1)(A) in favor of the Plaintiffs 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 benefit plans had that

coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104 (a)(1)(A) and severance in accordance with the New Jersey Warn Act; or, alternatively, determining that the first \$10,950 of the WARN Act claims of the Plaintiffs and each of the other similarly situated former employees are entitled to priority status, under 11 U.S.C. § 507(a)(4), and the remainder is a general unsecured claim; and

- E. An award against the Defendants Jevic Transportation, Inc., Jevic Holding Corp., Creek Road Properties, LLC, and Sun Capital Partners, Inc., in favor of the Plaintiffs and the other similarly situated former employees under the WARN Act 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 benefit plans had that coverage continued for that period;
- F. An award against all Defendants under the New Jersey WARN Act of compensatory damages, including lost wages, benefits and other remuneration and reasonable attorneys' fees under PL. 2007, c.212, C.34:21-6, and
- G. An allowed administrative-expense priority claim under 11 U.S.C. § 503 for the reasonable attorneys' fees and the costs and disbursements that the Plaintiffs incur in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104(a)(6) and PL. 2007, c.212, C.34:21-6.

H. Such other and further relief as this Court may deem just and proper.

DATED: May 23, 2008



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-- and --

Adam T. Klein (pro hac vice motion forthcoming)
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Complaint/Summons:

08-50662-BLS CASIMIR CZYZEWSKI and JEFFREY OEHLERS, on behalf o v. JEVIC
TRANSPORTATION, INC. et al

Type: ap Office: 1 (Delaware) Lead Case: 08-11006-BLS
Judge: BLS Case Flag: SVCDue, NONPREF

U.S. Bankruptcy Court**District of Delaware**

Notice of Electronic Filing

The following transaction was received from Loizides, Christopher Dean entered on 5/23/2008 at 6:34 PM EDT and filed on 5/23/2008

Case Name: CASIMIR CZYZEWSKI and JEFFREY OEHLERS, on behalf o v. JEVIC
TRANSPORTATION, INC. et al
Case Number: 08-50662-BLS
**Document
Number:** 3

Docket Text:

First Amended Complaint (*Class Action*) Filed by CASIMIR CZYZEWSKI, MELVIN L. MYERS, JEFFREY OEHLERS, ARTHUR E. PERIGARD and DANIEL C. RICHARDS, on behalf of themselves and all others similarly situated (Loizides, Christopher)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:F:\TMW8E\DATA\files\Oутten & Golden--Jevic Holding\52308 Amended Complaint.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=5/23/2008] [FileNumber=6327501-0]
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08-50662-BLS Notice will be electronically mailed to:**08-50662-BLS Notice will not be electronically mailed to:**

CREEK ROAD PROPERTIES, LLC
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JEVIC HOLDING CORP.
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