370

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:	:	
CF&I Fabricators of Utah, Inc., *et al.*,	:	Bankruptcy Number 90B-26721 Joint Administration [Chapter 11]
Reorganized Debtors.	:	
(CF&I Fabricators of Utah, Inc.)	:	(90B-26721)
(Colorado & Utah Land Company)	:	(90B-23722)
(Kansas Metals Company)	:	(90B-26723)
(Albuquerque Metals Company)	:	(90B-26724)
(Pueblo Metals Company)	:	(90B-26725)
(Denver Metals Company)	:	(90B-26726)
(Pueblo Railroad Service Co.)	:	(90B-26727)
(CF&I Fabricators of Colo., Inc.)	:	(90B-26728)
(CF&I Steel Corporation)	:	(90B-26729)
(The Colo. & Wyo. Railway Co.)	:	(90B-26730)

RULING ON REORGANIZED DEBTORS' OBJECTION TO APPLICATION FOR PAYMENT OF ADMINISTRATIVE EXPENSES DATED APRIL 1, 1993

The issues before the court relate to the procedural quagmire created by the filing of an Application for Payment of Administrative Expenses dated April 1, 1993, (Application). The Application asserted administrative claims pursuant to 11 U.S.C. § 503(a) and (b)[1] for

[1] Future references are to Title 11, United States Code, unless otherwise noted.

168

severance allowances and layoff benefits for a list of approximately 262[2] former employees (Applicants) of CF&I Steel Corporation (CF&I), one of the Debtors in this jointly administered and now confirmed Chapter 11 case.

An individual employed by CF&I as in-house attorney (Counsel) filed the Application as attorney for himself and as the *pro bono* representative for all former non-bargaining employees of CF&I who terminated their employment with CF&I on March 3, 1993. This court admitted Counsel *pro hac vice* as attorney for the ten affiliated Debtors from October 3, 1991, shortly after these Chapter 11 filings, until he ceased his employment on March 3, 1993. March 3, 1993, was also the effective date of the confirmed Debtors' and Railroad Trustee's First Amended and Restated Joint Plan of Reorganization Dated December 1, 1992, (Plan).

The Reorganized Debtors[3] filed an objection to the Application on two procedural grounds. They assert that the Application is a class claim that cannot be allowed. They also argue that the claim must be dismissed as moot because Counsel withdrew that portion of the Application relating to his individual administrative severance claim.

Some Applicants have responded to the Reorganized Debtors' objection through attorneys who filed an Entry of Appearance listing approximately 117 of the Applicants as their

---

[2] The parties refer throughout the pleadings to approximately 170 former employees as the number of names included in the Application. The Court counts 262 as the number of names included in the computer printout attached to the Application.

[3] The Reorganized Debtors refers to the Debtors after the effective date of the Plan. The Reorganized Debtors are to hold, liquidate and distribute certain unsold assets upon confirmation of the Plan.

clients. The balance of the Applicants are not represented and have not responded to the Reorganized Debtors' objection to the Application.

Those Applicants who filed a response argue alternatively that the Application is not a class claim, or if the Application is a class claim, in equity it should be amended. The Applicants' also seek as additional or alternative relief that the administrative claims bar date should be vacated and a new date established. This relief is based upon alleged excusable neglect because the Applicants' claim the notice of the administrative claims bar date circulated upon confirmation of the Plan was improper, and/or the Applicants' relied upon CF&I to file a timely administrative claim on their behalf. The Reorganized Debtors' assert the only issues material to the resolution of their procedural objection to the Application are whether Counsel was entitled to file a class claim for the Applicants, and whether the Applicants received notice of the bar date for filing administrative claims.

An evidentiary hearing was held during which the court heard the testimony of four of the Applicants. The court has now considered the pleadings, the evidence, and the arguments of counsel, its own independent review of the files of the case, and its own independent legal research. For the reasons set forth below, the Reorganized Debtors' objection to the Application is sustained on procedural grounds and the Application is disallowed.

History of CF&I and the Chapter 11 Cases

To place this dispute in context, it is helpful to understand the events leading to the chapter 11 filings of these debtors and the chronology of these reorganization proceedings. For years, CF&I Fabricators of Utah, Inc., and nine related entities, a vertically integrated steel manufacturer, struggled with the rest of the steel industry to adjust to declining market

conditions. In spite of significant downsizing, restructuring and employee concessions, CF&I's annual net sales of $250,000,000 to $300,000,000 still could not produce sufficient revenue to meet its obligations, including the responsibility to fund its various pension plans.

Ten chapter 11 petitions were filed with this court on November 9, 1990. CF&I's venture into Chapter 11 was driven by the need to resolve its substantial pension plan shortfall,[4] tax and environmental issues, and to protect the jobs not only of those employed by CF&I but various business dependent upon CF&I. Successful reorganization eventually turned on the resolution of disputes between CF&I, the Unsecured Creditors Committee, and an alphabet soup of competing claimants.

The Applicants, along with other creditors in the case, received a Notice and letter dated November 16, 1990, from CF&I, that informed the Applicants that the deadline for creditors to file proofs of claim was March 14, 1991. Creditors filed over 1,600 proofs of claim exceeding $2,000,000,000 with the court. Eventually rescue appeared in the form of Oregon Steel Mills Inc. (Oregon Steel), proposing an Asset Purchase Agreement covering the major portion of CF&I's assets. The attractiveness of Oregon Steel's offer was, among other things, that Oregon Steel did not intend to carve up and haul away CF&I's assets. Instead, Oregon Steel intended to continue operation of the majority of CF&I's facilities through transfers by the Debtors, pursuant to the Asset Purchase Agreement authorized by the Plan, of principal assets

---

[4] The pension funding shortfall resulted, in part, from the encouraged early retirement of employees, but the concomitant reduction in pension plan contributions from a dwindling work force. CF&I employed approximately 1,600 persons pre-petition, with approximately 8,600 retirees and dependents.

to CF&I Steel, L.P., a newly created entity.[5] The proposed Asset Purchase Agreement and Plan provided the hope of preserving at least a portion of CF&I's 1,600 employees' jobs, and preventing the social and economic catastrophe that would have followed closure of CF&I's facilities.

CF&I drafted a Disclosure Statement and Plan that created sixteen classes of claimants that was forwarded to parties entitled to vote. The Plan, although thirty single spaced pages long plus exhibits, was clearly and concisely written, and as devoid of legalese as allowed by the complexity of the circumstances. Over 8,000 ballots were filed. The confirmation hearing occurred over several days, with periodic recesses as the parties continued negotiations not only between CF&I and its creditors, but with Oregon Steel. The parties attempted to structure an Asset Purchase Agreement that would ultimately provide distribution to CF&I's creditors, and also meet Oregon Steel's requirements related to bargaining a new contract with the respective unions. Finally, the Plan was confirmed setting an effective date to coincide with the projected closing date of the Asset Purchase Agreement with Oregon Steel.

FACTS

Treatment of Administrative Claims In The Confirmed Plan

The approved Disclosure Statement circulated to creditors, including the Applicants, provided the following at exhibit 7, page 4:

> Claims for Severance and Group Insurance. CF&I Steel Corporation believes that certain employees of CF&I Steel Corporation will be eligible for severance or

---

[5] New CF&I, Inc., is a newly created Delaware Corporation and a wholly owned subsidiary of Oregon Steel. New CF&I Limited Partnership (CF&I Steel, L.P.) is a limited partnership having New CF&I Inc., as its sole general partner. All the entities were created in anticipation of the confirmation of the Plan.

supplemental unemployment benefits (S.U.B.) and group insurance. CF&I has estimated these amounts payable as a $1,009,000 administrative claim and $55,000 as a general unsecured claim. If the Plan is confirmed resulting amounts payable as a result of these Claims will be paid to a severance/group reserve and after the Plan's Effective Date disbursed to applicable employees. Severance, S.U.B., and group insurance amounts paid will not exceed amounts paid into the severance/group insurance reserve. However, should those benefit amounts so paid be less than the total paid into the severance/group reserve the excess amounts will subsequently be disbursed to other claims as provided in the Plan.

The Plan confirmed by the court by order entered February 12, 1993, contained the following provisions in Article II - Treatment of Administrative Claims and Tax Claims:

> 49. Administrative Claims. Allowed Administrative Claims shall be paid by the Debtor . . . . on or within ten (10) Business Days after the later of (a) the Effective Date and (b) the date on which such Person becomes the holder of such an Allowed Administrative Claim.
>
> . . . .
>
> d. Allowed Administrative Claims for severance benefits[6] and group insurance shall be paid by the Debtors or the Reorganized Debtors and adequate amounts for such payments shall be segregated and held under the Plan as a designated reserve for such claims.

It also included Article IV - Means for Implementation of Plan, that stated:

> 65. Bar Date for other Administrative Claims. Unless the Plan or the Court fixes a different date, all Claims against the Debtors for Administrative Claims shall be filed no later than thirty (30) days after the Effective Date. All such Claims not timely filed shall be forever barred. The Reorganized Debtors and any other party in interest may object to the allowance of any such Claim before, on, or after the Effective Date.

The Plan defined Effective Date as follows:

---

[6] According to CF&I's standard procedures, severance differed from layoff both in eligibility and benefits. If an employee elected to be placed on layoff status, he or she was not eligible for severance allowance. After confirmation, if a terminated employee was hired by CF&I Steel L.P., that employee allegedly did not receive termination benefits. If a terminated employee was immediately hired by another employer, that terminated employee allegedly received termination benefits.

> 27. Effective Date. "Effective Date" means a Business Day selected by the Debtors and Oregon Steel Mills, Inc., and New CF&I Limited Partnership (written notice of which shall be filed with the Court) which is, unless the Court after Confirmation enters an order fixing a later date, not more than thirty (30) Business Days after the date on which each of the conditions to the Plan's Effective Date set forth in Article V of the Plan [conditions precedent including closing of the Asset Purchase Agreement] has either been satisfied or waived in accordance with the Plan.

On February 16, 1993, as required by Bankruptcy Rule 2002, the Notice of Confirmation of Debtors' and Railroad Trustee's First Amended and Restated Joint Plan of Reorganization Dated December 1, 1992 and of Deadlines for filing Certain Claims (Notice) was mailed to each of the Applicants. The Notice was a two page document containing, among others, the following statements:

> 2. At the present time, the projected Effective Date of the Plan, subject to change, is March 3, 1993. However, pursuant to paragraph 27 of the Plan, written notice of the date selected to be the Effective Date shall be filed with the Court. Parties in interest can obtain a copy of this notice from the Debtors by sending a request, in writing, to (the debtors' bankruptcy counsel).
>
> . . .
>
> 4. The Plan also provides, among other things, for the following deadlines for filing Claims. However, this list of deadlines may not be exhaustive and certain bar dates may have been modified by the Confirmation Order. Accordingly, parties should consult the Plan and Confirmation Order. . . .

The Notice then listed seven categories of claims, including claims against officers and directors, fee claims, claims arising under the Coal Industry Retiree Health Benefits Act of 1992, priority claims under § 1171, executory contracts, and claims arising from certain judgments. The fifth listing of claims with a specific bar date was the following:

> e. Bar Date for Other Administrative Claims. Pursuant to paragraph 65 of the Plan, unless the Court fixes a different date, all Claims against the Debtors for Administrative Claims shall be filed not later than thirty (30) days after the

> Effective Date. *All such Claims not timely filed shall be forever barred.* The Reorganized Debtors and any other party in interest may object to the allowance of any such Claim before, on, or after the Effective Date. (emphasis added)

The court approved the form of the Notice as providing sufficient notice to parties in interest and as complying with Bankruptcy Rules 2002 and 3021. On March 3, 1993, a Notice of Effective Date Dated 3/03/93, was filed with the court giving notice that March 3, 1993, was designated as the Effective Date. It was also mailed to all parties on Master Service List No. 30[7] on file with the court.

Actions of the Applicants

CF&I complied with the WARN Act of 1988 by forwarding a notice dated December 30, 1992, to all employees that CF&I anticipated that its assets would be sold to a unit of Oregon Steel. The notice indicated that the expected closing date of the sale was March 1, 1993. Generally, during the course of the chapter 11 proceedings, management of CF&I communicated with its non-bargaining employees who had potential claims against the estate, by forwarding individual letters to the individual employees' home address. The correspondence was the responsibility of Robert Breen (Breen), Director of Industrial Relations, but not the responsibility of Counsel. No correspondence was forwarded from CF&I to non-bargaining employees regarding severance pay. During the pendency of the Chapter 11 proceedings, if employees had questions regarding mailings received relative to the Chapter 11 proceeding, they were told for the most part that individuals did not need to be concerned with the mailings that

---

[7] The Master Service List is a document provided for in the case management orders entered in these cases. It consists of a listing of the names and addresses of certain parties in interest including the unsecured creditors committee, and all parties that requested notice in the cases. The Master Service List was updated on a weekly basis by CF&I and filed with the court, by adding and deleting the names and addresses of parties in interest as requested by them.

were sent out, and that claims would be filed on their behalf. If they were bargaining employees, the union would take care of filing claims. If they were non-bargaining, the company would take care of it.

After the date the Plan was confirmed, but before the effective date that coincided with the closing date of the Asset Purchase Agreement, employees of CF&I were in the process of either planning alternative employment in anticipation of their projected termination from CF&I, or were interviewing with Oregon Steel. Oregon Steel anticipated hiring approximately 1,200 people, most of whom would be former employees of CF&I. Breen terminated his employment with CF&I and started his own consulting firm, rather than becoming employed by CF&I Steel, L.P. Counsel was hired by CF&I Steel, L.P. as its in-house attorney.

During the course of the chapter 11 proceeding, correspondence from Breen had informed employees that CF&I would file certain benefit related claims on their behalf. In early February, 1993, the Applicants received the Notice forwarded to parties in interest relating to confirmation of the Plan. Some became concerned that additional action was required on their part in order to obtain their severance benefits under the confirmed Plan. Various of the Applicants inquired of CF&I management, including Breen and Counsel, regarding the necessity of filing claims prior to the effective date. They were informed, (erroneously) that it was not necessary to file administrative claims because the severance/group reserve fund was already created in the Plan. When CF&I mailed the Notice to claimants, Breen instructed that inquiries be direct to one individual in the office. The response of that individual as to whether employees needed to file administrative claims, whether CF&I would file claims for employees, or whether employees should file their own claims is not included in the record.

CF&I filed four claims on behalf of various groups of employees shortly after the claims bar date, pursuant to § 501(c) and Bankruptcy Rule 3004.[8] Each of the proofs of claim were filed as contingent, unliquidated and disputed, and expressly reserved the right to object to the claims if necessary.[9] The claims are as follows:

> 1) On March 21, 1991, CF&I filed an unsecured, contingent and unliquidated proof of claim for profit sharing, on behalf of 4,871 participants in the 1982 Profit Sharing Plan asserting that no amounts were owing under the Plan. (Claim no. 9-0929.)
>
> 2) On April 9, 1991, CF&I filed an unsecured proof of claim for former employees or their surviving spouses who might have claims against CF&I for medical benefits related to their workers' compensation claims that CF&I considered to be contingent, unliquidated and subject to dispute, and that CF&I considered to be owed by the State of Colorado's major medical insurance fund. (Claim no. 9-0940.)
>
> 3) On April 12, 1991, CF&I filed on behalf of current and former non-union employees of CF&I an unsecured nonpriority proof of claim for certain non-contributory pension fund payments that CF&I considered to be contingent, unliquidated and subject to dispute. (Claim no. 9-0942.)
>
> 4) On April 12, 1991, CF&I filed on behalf of 715 current and former non-union employees, an unsecured proof of claim for certain pension fund payments that CF&I considered to be contingent, unliquidated and subject to dispute. (Claim no. 9-0943.)

CF&I filed objections to claim number 9-0929 and to claim number 9-0943, (along with objections to 239 separate claims filed by individuals related to the same issues), and the claims were disallowed.

---

[8] Counsel believed that the proofs of claim were filed late through an agreement between the attorney for CF&I and the attorney for the Unsecured Creditors' Committee. Each proof of claim, however, states on its face that it is filed pursuant to § 501(c) and Bankruptcy Rule 3004.

[9] Filing the proofs of claim and obtaining orders disallowing the contingent and unliquidated claims enabled CF&I to eliminate the contingent liability that may have existed prior to the date of filing so that no provision need be made for the claims in the Plan.

After the effective date on March 3, 1993, Counsel inquired of the bankruptcy attorney for CF&I and the attorney for the Unsecured Creditors' Committee regarding the necessity of filing administrative claims for severance benefits, and was informed that filing was required under the terms of the Plan. Counsel then informed interested employees who were now working for CF&I Steel L.P. who inquired of him, that he would file a claim for himself and for non-bargaining employees who may be entitled to severance benefits.

The Applicants were well aware that March 3, 1993, was the projected closing date with Oregon Steel as well as the effective date of the Plan, in part because it was the date on which they ceased to be employed by CF&I. There is no evidence that the Applicants were confused or mislead regarding March 3, 1993, being the effective date of CF&I's confirmed Plan and the date from which to calculate when administrative claims for severance were due.

The Application

On April 2, 1993, the last date to file administrative claims, Counsel filed the Application that purports to be an administrative claim for the Applicants' severance pay.[10] The Application describes a list of individuals who should be included in the "class" of Applicants for the purpose of the Application. None of the Applicants, other than through the Application, filed a timely request for payment of severance allowances and layoff benefits. The Application was served on certain attorneys, but not upon the list of Applicants. Few of the Applicants were aware of the Application prior to its filing with the court, or have seen the

---

[10] The Application attaches, among other documents, Exhibit 3 consisting of a computer list of 262 names purporting to be the best currently available list of those Old CF&I employees who were terminated as employees on March 3, 1993, and who should be included in the "class of applicants" for purposes of the Application.

Application. With one identified exception[11] none of the Applicants authorized Counsel to file the Application on their behalf prior to its filing, although they subsequently learned of the act and did not disapprove of Counsel's actions.

At the time Counsel filed the Application he had not been retained by any of the Applicants, he had no written authorization to file claims on their behalf, and he was not employed by or authorized to representing CF&I. Counsel has not filed the verified statement set forth in Bankruptcy Rule 2019, required by any entity that represents more than one creditor. At no time did CF&I, the Reorganized Debtor, or CF&I Steel, L.P. request that Counsel file the Application.

On August 27, 1993, Counsel filed a Notice of Withdrawal pursuant to Bankruptcy Rule 3006 (withdrawal of claim) of that portion of the Application that purported to represent Counsel's personal severance claims in the amounts of $8,265 and $8,000. The Notice of Withdrawal stated that the withdrawal was for Counsel only, and not for any other individual applicant with identical claims.

Counsel also filed a motion to withdraw as the *pro-bono* attorney for all former non-bargaining employees of CF&I who terminated their employment on March 3, 1993, along with a "certificate"[12] pursuant to Local Rule 542(a)(2) in support of his motion. His

---

[11] The exception was Joe B. Mahaney. He testified that he was instrumental in convincing Counsel to file the Application. If Counsel had not filed the Application, Mahaney planned to file his own claim before the deadline.

[12] In the "certificate", Counsel explained that in filing the Application, he acted as an individual and not in any official capacity with CF&I Steel, L.P. or its affiliated corporations. Effective September 1, 1993, Counsel expected to terminate his employment as General Counsel of CF&I Steel, L.P. and join the law firm of LeBoeuf, Lamb, Leiby & MacRae, and would have a direct conflict of interest between his representation of the Applicants and LeBoeuf's representing the interests of the Reorganized Debtor.

"certificate" attached Exhibit A-3 (attached as Exhibit A to the Motion to Withdraw) that set forth the names of 224 (as opposed to the original 262) non-bargaining employees of CF&I who terminated their employment with CF&I on March 3, 1993. The certificate indicated that the list of 224 names included individuals who may have received severance benefits, while others may not have been eligible for severance benefits because they failed to meet various requirements.

Counsel sent an Administrative Expenses Claim Case Status Report (Report) to those individuals included on the list attached to the Application. The Motion to Withdraw itself was served only upon the attorney for Reorganized CF&I. The Report indicated that, although the Report was sent to the Applicants, they may or may not be eligible for severance benefits. It also indicated that although the Application was timely filed, Counsel was withdrawing as attorney representing the group of individuals identified in the Application and they should consider consultation with an attorney, who, unlike Counsel, may charge for his or her services. Throughout the pleadings, Counsel characterized himself as the attorney for the group.

The Reorganized Debtors' filed an objection to the Application and served it on the persons listed on Exhibit A-3 of the Certificate. The objection asserted, as a preliminary procedural matter, that the Application represented a class claim that should be disallowed. In response, certain of the Applicants met together on September 14, 1993, to discuss Counsel's actions, the Reorganized Debtors' objection, and to form a committee. A letter dated September 16, 1993, was drafted by the committee and mailed to interested employees suggesting various

actions.[13] The committee also drafted and various Applicants (approximately 64) filed, copies or originals of a document entitled Verification of Claim for Payment of Administrative Expenses Dated April 1, 1993, as Filed by [Counsel] (Verifications).[14] All of the Verifications were filed after the Reorganized Debtors' September 3, 1993, objection was circulated.

Various Applicants (approximately 47) also executed Affidavits,[15] copies of which were attached to the Applicants' Response to Application for Payment of Administrative Claims. The Affidavits represented that management personnel of CF&I told employees that CF&I would file claims on their behalf. The Affidavits were notarized by various of the Applicants.

---

[13] One suggestion was to send a letter requesting severance to J. David Houghton, as representative of the Reorganized Debtors, with a copy to the court. The correspondence indicated that the sender should state that the sender felt [Counsel's] action was filed on the senders' behalf. Apparently approximately 400 letters were sent to the Reorganized Debtor, many by bargaining unit employees.

[14] The Verifications are typed, fill-in-the-blank forms, and state:

I, _____ do hereby verify my claim for payment of administrative expenses in the amount of $_____. My continuous service date is _____ from which my _____ years of service is calculated (factor _____). Factor X salary = Amount of Claim.

I was told by old CF&I management that application for benefits was being filed in my behalf.

_____(signed)

The Verifications were apparently filed in response to the letter dated September 16, 1993, that recommended the Applicants "[s]end a letter directly to the court in Utah stating the amount of your individual claims and that you felt Mike Coriden's action was filed on your behalf."

[15] The Affidavits are variations of a typed fill-in-the-blank form, subscribed to by the Applicant containing the following statement:

I was employed by CF&I Steel Corporation until I was terminated March (blank), 1993.

During the time that CF&I was in bankruptcy, I was told by (blank) that employees could file individual claims if they wanted to, but it was not necessary, because the company would file a claim for all of them for severance pay. At that time, Mr. (blank) title was (blank) .

I relied on this information.

Although I am now employed by CF&I, LP, I do not have a contract for employment with that company, and I have no job security.

_____ (signed)

Notary statement and seal.

The Affidavits are generally internally inconsistent in that one individual is usually named as the party communicating to the affiant, with an additional fill-in-the-blank statement intended to identify the person's position with CF&I. Most of the affidavits instead refer to one person as the individual with whom the affiant communicated, then fill in the remaining blank with Counsel's name and position: a nexus that has no probative value. In addition, the Affidavits lack foundation as to when either the asserted notice was given, or when the affiants' reliance took place.[16] The Affidavits are also suspect because of the instruction given by the committee in its September 16, 1993, letter, and it is difficult to ascertain whether the affiant is merely following instructions, or is reciting from his or her own knowledge the information contained in the Affidavits.

The evidence related to the issues before the court is limited, especially in light of the number of Applicants identified in the Application. At the hearing on these procedural objections, only four Applicants testified. The court also has as evidence the Affidavits referenced above, subject to a Motion to Strike described below. What the position of the remaining Applicants is in relation to these matters is pure supposition. They may not have sufficient interest to have responded to the Reorganized Debtors' objection, may not be entitled to severance benefits, or may for other reasons have chosen not to participate. The Reorganized Debtors' attorney indicates that many individuals covered by collective bargaining agreements may have made post deadline demands for severance. The nature of the Application that

---

[16] There are exceptions. The Affidavit filed by Robert L. Cryderman is more specific with at least some foundation in time and specificity as to what information was relied upon. The Affidavit is notarized by Lynnette M. Godfrey, one of the listed Applicants.

purports to cover so many individuals makes evidentiary rulings regarding knowledge, intent, reliance, good faith or prejudice less than exact.

LEGAL ANALYSIS

Jurisdiction and Issues

The confirmed Plan provided, pursuant to Article VI - Effects of Plan Confirmation, paragraph 86, that this court retained jurisdiction to enter any orders or to resolve any disputes relating to interpretation and implementation of the Plan. The court may therefore hear and decide the issues presented herein. *In re Terracor,* 86 B.R. 671, 675-76 (D. Utah 1988).

The Reorganized Debtors' objection purports to be procedural only, asserting the Application is an impermissible class claim, now made moot by the withdrawal of Counsel's administrative severance claim. In the event the court determines that any part of the pleading filed by Counsel represents a administrative claims for severance pay, the Reorganized Debtors' reserve the right to object to the substance of the claims. The Applicants' response broadened the scope of the dispute by attacking the Notice, as well as the Applicants' reliance on CF&I's prior claims filing procedures, as indicative of excusable neglect requiring an extension of the claims bar date.

Motion to Strike Affidavits

The Reorganized Debtors' moved to strike the various forms of Affidavits on the basis that reference to the statements told to the Applicants were hearsay. The statements complained of are out of court statements, but the Applicants assert the statements are not submitted for the truth of the assertion, but rather for the fact that notice was given by the

identified person to the affiants. *Marsee v. United States Tobacco Co.*, 866 F.2d 319, 325-26 (10th Cir. 1989) (a series of learned articles related to whether smokeless tobacco caused cancer were admitted, not to prove the proof of causation, but on the issue of whether the defendant had notice of the potential dangers its product posed to consumers); *West Coast Truck Lines, Inc. v. Arcata Community Recycling Center, Inc.*, 846 F.2d 1239, 1246 at n. 5 (9th Cir.), *cert. denied*, 488 U.S. 856 (1988) (oral agreement to charge reduced rates was admitted because it was offered to show that the statement was made, not to prove the truth of the matter stated, and was not the only evidence that the carrier agreed to charge reduced rates); *United States v. Central Gulf Lines, Inc.*, 747 F.2d 315, 319 (5th Cir. 1984) (in a suit for the value of missing soybean oil consigned for transport to the defendant, certain survey reports, a shortlanding certificate, and letter of protest were admitted to prove that notice of the claim had been properly given).

The Reorganized Debtors also objected to the admissibility of the Affidavits because they were notarized by individuals who are themselves Applicants, in violation of Colorado Revised Statutes § 12-55-110(2) prohibiting notarization by a person who has a disqualifying interest in a transaction.[17] In order for this statute to prohibit the admissibility of the Affidavits, the Applicant-Notaries must derive some advantage from the Affidavits. The

---

[17] Colorado Revised Statutes § 12-55-110 Powers and limitations (of notaries) includes the provision:

(2) A notary public who has a disqualifying interest in a transaction may not legally perform any notarial act in connection with such transaction. For the purposes of this section, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:

(a) May receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash, or property exceeding in value the sum of any fee properly received in accordance with this part 1; or

(b) Is named, individually, as a party to the transaction.

Affidavits have little probative value on any fact, including notice. Therefore, the corresponding advantage that might accrue to the Applicant-Notaries is insufficient to bar their receipt into evidence. Rather, the court weighs the probative value of the Affidavits considering their drafting, execution, and the involvement of the Applicant-Notaries. The Motion to Strike is denied.

Class Claims and Mootness

The Reorganized Debtors' assert that the Application constitutes an impermissible class claim. Although the Application and related documents appear to designate the pleading as a class claim, that characterization alone is not dispositive and further analysis is warranted.

Bankruptcy Rule 7023 that applies in adversary proceedings includes as prerequisites that one or more members of a class may sue as a representative only if:

1. the class is so numerous that joinder of all members is impracticable,
2. there are common questions of law or fact,
3. the representative's claims or defenses are typical of the class, and
4. the representative will fairly and adequately protect the interests of the class.

In this case, the Application specifically lists the names and addresses of included employees, indicating that joinder of all members is practicable. Notwithstanding, the list purports to represent only the best, currently available list of those CF&I employees whose employment terminated on March 3, 1993, not necessarily those entitled to administrative severance claims. Some of the individuals on the list may have already received severance benefits, while others may or may not be entitled to them.

In short, the list attached to the Application is not an accurate rendition of those entitled to administrative severance claims. It is only an indication of a larger group, a portion of whom may constitute the class. Since the Application does not purport to be a document that combines in one pleading the authorized individual claims of several claimants, there is little left except to characterize the Application as a class claim, even though it may fall short of the elements necessary for a class action in an adversary proceeding.[18]

Judge Matheson has traced the Tenth Circuit's position denying class claims in *In re Amdura Corp.*, 130 B.R. 575, 577-578 (Bankr. D. Colo. 1991). His thorough analysis of *Sheftelman v. Standard Metals Corp. (In re Standard Metals Corp.)*, 817 F.2d 625, 630 (10th Cir. 1987), *modified on other grounds, Sheftelman v. Standard Metals Corp.*, 839 F.2d 1383 (10th Cir. 1987), *cert. dismissed*, 488 U.S. 881, 109 S. Ct. 201 (1988), is persuasive. The Circuit's position was reiterated in *Unioil v. Elledge (In re Unioil, Inc.)*, 962 F.2d 988, 993 (10th Cir. 1992), indicating that *Standard Metals* stood for the proposition that while a class action procedure is available in adversary proceedings, the lack of comparable provisions in the rules governing claims procedures precludes the use of class proofs of claim. *Unioil* indicated that to be allowed, a creditor's proof of claim must be executed by the creditor or the creditor's

---

[18] The Application is not a proof of claim, but a request for allowance of administrative expense claims pursuant to § 503(a). The difference between the two is that proofs of claim are presumptively valid pursuant to § 502(a), but a request for allowance of administrative expense requires notice and a hearing pursuant to § 503(b), and a specific finding of allowance. The purpose of Bankruptcy Rule 3001(b) is to ensure that claims are accurate, the filer is accountable to the court, and that the limited assets of the estate are disbursed only to those entitled to receive them. Any difference in the allowance process is unrelated to the requirements that a proof of claim be executed by the creditor or the creditor's authorized agent, even though Bankruptcy Rule 3001(b) refers only to a proof of claim. Indeed, it is arguable that the additional restrictions placed on the allowance of administrative expenses are additional reasons to apply Bankruptcy Rule 3001(b), as well as Bankruptcy Rule 9011, to administrative expense claims to ensure their accuracy. The parties do not dispute that the standard applied to proofs of claim should be applied to the allowance of administrative claims.

authorized agent and must conform substantially to the appropriate Official Form. The case law is clear that the filing of a class claim is not permitted in this Circuit.[19]

In *Reed v. Heckler*, 756 F.2d 779, 785 (10th Cir. 1985), (*Reed I*) the court indicated "[a]s a general rule, a suit brought as a class action must be dismissed for mootness when the personal claims of the named plaintiffs are satisfied and no class has been properly certified." *Reed I* also discussed an exception to the general rule of dismissal. In *United States Parole Commission v. Geraghty*, 445 U.S. 388, 100 S. Ct. 1202 (1980) an action brought on behalf of a class did not become moot upon expiration of the named plaintiff's substantive claim if the issues were capable of repetition, yet evading review, so that an appeal of the denial of a class certification motion may be heard. The Tenth Circuit in *Reed I* applied the *Geraghty* exception, but only to class claims that have been rendered moot by purposeful action of the defendants. *Reed I*, 756 F.2d at 786. The court was concerned that a defendant would be able to, in effect, buy off the plaintiff's claims and prevent judicial review of the issues.

In this case, neither CF&I nor the Reorganized Debtors, did anything to cause Counsel to withdraw his administrative severance claim. It has not even been suggested that the fact that Counsel was hired by the law firm representing the Reorganized Debtors was some scheme to render the Application moot. Therefore, the narrow exception indicated in *Reed I* is not present here and the Application is moot as a result of Counsel's withdrawal of his administrative severance claims.

---

[19] In the event the Application is not characterized as a class claim, it none-the-less fails because Counsel did not have express authorization to file the Application on behalf of the Applicants. Bankruptcy Rule 3001(b) provides that a proof of claim must be filed by the claimant or the claimant's authorized representative. An agent may only file a proof of claim for those individuals who have expressly authorized the agent to do so, and that authorization must be prior to filing the claim. *Standard Metals Corp.*, 817 F.2d at 631.

The Applicants' argue that *Reed I* would have demanded that some accommodation be made so that the claims of the members of the uncertified class survive.[20] *Reed v. Bowen*, 849 F.2d 1307 (10th Cir. 1988) (*Reed II*) considered whether remedial action had been taken on remand sufficient to enable the class claim to survive. *Reed II* found that the named plaintiffs lacked standing when they had failed to substitute a new named plaintiff with an active claim, and when no evidence reflected the existence of a group of individuals having a continuing live interest in the issues before the court. If the Applicants had attempted to substitute a new party in place of Counsel to remedy the mootness issue, and even considering the Applicants represent a group of individuals having a live interest in these issues, Applicants' cause would not be advanced because of the underlying prohibition against class bankruptcy claims.

Reed I and Reed II are simply inapposite to this case that involves proofs of claim instead of class certification in the context of an adversary proceeding, other than as a recitation of the general principal of mootness. In addition, the facts and policies behind *Reed I and Reed II* are very different from this private class of Applicants who seek to collect contractual benefits from a private employer. *Reed I and Reed II* involved citizens seeking entitlements from a governmental agency. Continued attempts to repair the Application so as to qualify for certification of a class is inappropriate and not a viable remedy.

---

[20] *Reed I* focuses on jurisdictional issues surrounding a governmental agencies ability to evade review of its cross recovery program that allowed it to collect alleged overpayments of supplemental security income by withholding current old age, survivors and disability insurance benefits. The issue was whether resolution of the named plaintiffs' individual claims mooted a proposed class action on appeal when the district court denied certification of the class for an inappropriate reason.

Informal Proofs of Claim

The Applicants' urge the court to view the Application as a timely filed informal claim. In *Clark v. Valley Fed. Sav. & Loan Ass'n (In re Reliance Equities, Inc.)*, 966 F.2d 1338, 1345 (10th Cir. 1992), the Tenth Circuit adopted a five part test to determine whether a late claim should be considered merely an amendment of an earlier informal claim. The informal claim (here the Application) must satisfy the following criteria:

1. the proof of claim must be in writing,
2. the writing must contain a demand by the creditor on the debtor's estate,
3. the writing must express an intent to hold the debtor liable for the debt,
4. the proof of claim must be filed with the Bankruptcy Court, and
5. based upon the facts of the case, it would be equitable to allow the amendment.

Reliance Equities, 966 F.2d at 1345.

This argument fails for the same reasons set forth above related to class claims. Although the Application was in writing, filed with the court, appears to express an intent to hold the Reorganized Debtors liable for the administrative severance claims, and may have an element of equity, it fails to contain a demand by the Applicants on the estates. The Application is not signed and filed by the Applicants. It is not filed by the Applicants' authorized agent. Therefore, the Applicants' assertion that the Application is an informal proof of claim fails.

Request to Vacate the Prior Bar Date

The Applicants' last argument is that the Court should vacate the prior bar date for this group of administrative claims, fix a new bar date, and order the Reorganized Debtor to give adequate notice thereof. The Applicants' assert the standard of excusable neglect

articulated in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. Partnership*, 113 S. Ct. 1489 (1993) is applicable in this case and allows the court to enlarge the time within which the Applicants can file their claims pursuant to Bankruptcy Rule 9006(b)(1).

Bankruptcy Rule 3003(c)(3) authorizes the court to extend time for filing proofs of claim for "cause shown." It must be read in conjunction with Bankruptcy Rule 9006(b)(1), that provides that when a party moves for extension of time after expiration of the time period, it must show that its failure to act before the court's deadline was the result of excusable neglect. The Supreme Court has now clarified in *Pioneer* the somewhat divergent interpretations between the Circuits of what constitutes excusable neglect. The Supreme Court indicated that allowance of late filed claims due to excusable neglect entails an equitable inquiry, and is not limited to situations where the failure to timely file is due to circumstances beyond the control of the filer, but includes both simple, faultless omissions to act, and more commonly, omissions caused by carelessness. *Pioneer*, 113 S. Ct. at 1495-96. *Pioneer* set forth the following test to determine if excusable neglect has occurred that would allow an extension of the claims bar date:

1. the danger of prejudice to the debtor,
2. the length of the delay and its potential impact on judicial proceedings,
3. the reason for the delay, including whether it was within the reasonable control of the movant, and
4. whether the movant acted in good faith.

Pioneer, 113 S. Ct. at 1499.

Application of the test to the facts of this case indicates the following. The first test weighs in favor of the Reorganized Debtors. No specific prejudice would occur to the Reorganized Debtors if the claims bar date were extended because the Plan is now confirmed,

but allowing an extension of time to file administrative severance claims would impact other creditors. The Plan committed a fund of $1,009,000 to pay administrative severance and group insurance claims. If allowed administrative claims are less than the total paid into the severance/group reserve, the excess amounts are to be disbursed to other claimants. In addition to impacting the amount distributed to other claimants from the severance/group reserve, the cost of this litigation also depletes the fixed assets of the estate to the detriment of creditors.

The second test weighs equally in favor of both litigants. The Objection to the Application and responses by the Applicants were all filed within a reasonable time and placed upon the court's calendar as time would permit. However, unraveling these various administrative claims would result in delay for this estate. It would be inaccurate to sort through the Verifications, as well as correspondence filed with the court, to try to determine which documents represent allowed administrative severance claims. There may be administrative severance claimants that did not participate in the September 14, 1993, meeting, and are not represented here. To prevent an unjust or unequal treatment of the class of administrative claimants, it would be necessary to notice a new bar date to all of this group of administrative claimants. The delay of renoticing impacts the Applicants the most severely. But a new bar date would create additional delay to other creditors in receiving final distribution of any spill over amount entitled to be applied to their claims. There would also be added expense to the Reorganized Debtors in recirculating notice that would impact the limited resources of the estates.

The third test weighs most heavily against the Applicants because the delay was entirely within their control. Absent their election to delegate filing their administrative claims

to others, and the result of a mistake of law, the Applicants would have been paid allowed administrative severance claims within ten days of their allowance.

The final test favors the Applicants. There is no evidence to indicate these Applicants are not acting in good faith.

Taken in its totality, the test stated in *Pioneer* weighs in favor of the Reorganized Debtors. The compelling reason for denial of the Applicants' motion, however, is because the test for excusable neglect presupposes that neglect occurred. In this case it did not. There was no negligent omission on the Applicants' part such as forgetfulness, carelessness or faultless omission to act as defined in *Pioneer*. Rather than omission or negligence, the Applicants made an affirmative decision to either rely on the statements of Breen or Counsel, or to rely on Counsel to file administrative severance claims on the Applicants' behalf.

Instead of neglect, the Appellants' argument is more related to mistake. They argue either that: 1) they mistakenly relied to their detriment on representations that CF&I would file claims on their behalf before the administrative claims bar date, or 2) they relied upon Counsel to file claims on their behalf before the administrative claims bar date and Counsel's mistake of law in filing a class claim constitutes excusable neglect.

Certain types of mistake fall within excusable neglect. *Pioneer* stated (without citation) that Congress clearly intended that Bankruptcy Rule 9006(b)(1)[21] relating to extensions of time based on excusable neglect, also contemplated late filings caused by inadvertence,

---

[21] Bankruptcy Rule 9006(b)(1) refers to the general enlargement of time "for cause shown," including excusable negligence. Bankruptcy Rule 3003(c)(3) also uses a "for cause shown" standard for extension of time within which proofs of claim or interest may be filed. *See Patterson v. Brady*, 131 F.R.D. 679, n.3 (S.D. Ind. 1990) for a discussion of whether the "for cause shown" is a higher standard than excusable neglect.

mistake, or carelessness, as well as by intervening circumstances beyond the party's control. *Pioneer,* 113 S. Ct. at 1495; *see also Jones v. Arross,* 9 F.3d 79, 81 (10th Cir. 1993). In comparing Bankruptcy Rule 9006(b)(1), however, the Supreme Court indicated that

> Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute "excusable" neglect, it is clear that "excusable neglect" under Rule 6(b) is a somewhat "elastic concept" (citing 4A C. Wright & A. Miller, Federal Practice and Procedure § 1165, p. 479 (2d ed. 1987) and is not limited strictly to omissions caused by circumstances beyond the control of the movant.

Pioneer, 113 S. Ct. at 1496. Since this statement is set forth in a paragraph related to the ordinary meaning of "neglect," and the admonition that Congress intended words in its enactments to carry their ordinary contemporary common meaning, it is arguable that the kind of mistake referenced is to mistakes as a result of omission or negligence, rather than mistakes that result from an error in interpreting the law. If the mistake is a mistake of law, it may not fall within the standards of excusable neglect. *See Cessna Finance Corp. v. Bielenberg Masonary Contracting, Inc.*, 715 F.2d 1442, 1446 (10th Cir. 1983)(in a Rule 60(b) motion in which the principal of a corporate debtor failed to answer because he believed that the automatic stay provided by a corporate filing would also protect him, the court found that the movant "made an error of law--that he would not be liable by reason of the bankruptcy filing--and then compounded it with an error of judgment in not informing his attorney" therefore finding "failure to seek advice of counsel does not constitute excusable neglect"); *Cloyd v. Arthur Anderson & Co.* 151 F.R.D. 407 n. 9 (D. Utah 1993)(citing cases indicating that mere inadvertence or mistake of counsel does not constitute excusable neglect).

The first part of the mistake analysis relates to the Applicants' alleged detrimental reliance upon statements that CF&I would file administrative severance claims in their behalf. The underlying assumption of this assertion is that such a special or confidential relationship existed between the Applicants and CF&I that the Applicants were entitled to, and did, rely to their detriment upon the belief that CF&I would file administrative severance claims on their behalf.

In some circumstances, a confidential relationship upon which a party relies may excuse the relying party's acts. *First National Bank v. Theos*, 794 P.2d 1055, 1061 (Colo. Ct. App. 1990) (the party claiming the existence of a confidential relationship must show that he justifiably reposed a special trust or confidence in the other to act in the claimants interest); *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979) (the party claiming a confidential relationship must show, by a preponderance of the evidence, that a special trust or confidence was in fact reposed, that its reposition was justifiable, and that the other party either invited or ostensibly accepted the trust imposed). If a confidential relationship exists, reliance thereon may be the basis of excusable neglect. *ITT Commercial Finance Corp. v. Dilkes (In re Analytical Systems, Inc.)*, 933 F.2d 939, 943 (11th Cir. 1991) (breach of the confidential marital relationship between husband and wife resulting from wife's reliance upon husband's statements, so that she did not file a proof of claim, does not constitute excusable neglect). Ordinarily, however, confidential relationships do not encompass the employer-employee relationship. *Cochran v. Murrah*, 219 S.E.2d 421, 424 (Ga. 1975) (generally the employer-employee relationship is not the type of relationship such as that of principal and agent from which the law will necessarily imply confidentially, but rather is that of arms length bargaining).

The facts of this case do not indicate that any asserted reliance on CF&I filing an administrative severance claim for these Applicants was reasonable. The employer-employee relationship is not customarily a confidential relationship. In the past, important communication related to employee benefits had been forwarded in writing from Breen to each employees' home. In spite of Breen's written communication that CF&I would file claims on behalf of its employees for contingent profit sharing, over 239 employees ignored the offer and filed their own claims. There was no written correspondence from Breen that CF&I would file administrative severance claims for the Applicants.

The language in the Plan and Notice required that administrative claims be filed by the claims deadline. At the time the Notice was forwarded to creditors, a change of procedure occurred in oral communications to employees, although the content of the new communication is not in the record. After March 3, 1993, Breen was no longer employed by CF&I or CF&I Steel, L.P., (although he may have acted as a consultant) and reliance upon any communication from him would have been unwarranted.

All prior claims filed by CF&I that related to employees were filed as contingent, disputed and unliquidated. It is apparent that all claims filed by CF&I were filed for the purpose of providing a mechanism to disallow contingent claims that may have hampered Plan confirmation. Not only CF&I's unliquidated, contingent and disputed claim, but all the profit sharing claims that employees filed, were disallowed. No liquidated claim had ever been filed by CF&I on behalf of employees. There is no evidence that any official act of CF&I, as opposed to an act of an officer or employee, accepted the responsibility to file administrative severance claims on behalf of the Applicants.

The last basis for asserting excusable neglect is that the reliance, if any, placed by the Applicants on Counsel to file their administrative severance claims, and the subsequent failure to file a claim allowed in this Circuit, constitutes excusable neglect. The evidence indicates, however, that generally the Applicants were unaware prior to the bar date that Counsel filed the Application. They did not authorize the Application before it was filed and they were not served a copy after it was filed. *Novak v. Callahan (In re GAC Corp.)*, 681 F.2d 1295, 1299-1300 (11th Cir. 1982) (in an Act case where creditor filed a class claim, the individual filing the class claim argued that the members of the class were entitled to rely upon the validity of the class claim because trustees did not object to the class claim until after the claims bar deadline had passed, the court found that it was difficult to comprehend how the class members could have relied on a class proof of claim when they had no notice thereof). Those few Applicants who, like Mahaney, contend Counsel filed the Application at their insistence, placed their reliance solely upon Counsel after he was no longer affiliated with CF&I.

Pioneer clarified that clients are bound by the mistakes of their attorneys, unless the actions of the attorneys are in and of themselves excusable. Although Counsel was not retained by the Applicants prior to filing the Application, they now seek to use his actions as a basis for an extension of the bar date. Counsel's mistake of law in filing a class claim is premised upon his reliance upon prior claims having been filed by CF&I on behalf of employees. However, all of those claims were filed pursuant to § 501(c) and Bankruptcy Rule 3004. Filing a § 501(c) claim cannot be bound by the same restrictions set forth in *Standard Metals Corp.*, because a § 501(c) claim by definition is one filed by the debtor or trustee when a claimant has failed to file. Therefore, it would not be filed pursuant to express authorization

of the claimant given prior to filing the claim. The Applicants' cannot claim that Counsel's actions constitute excusable neglect based upon his reliance on CF&I's prior filed proofs of claim.

The Applicants' final basis for a ruling of excusable neglect is that the Notice provided in this case was inadequate. Perhaps that assertion arises because of the Supreme Court's ruling that clients must be held accountable for the acts and omissions of their attorneys, and the court's resulting inquiry into the notice of the claims bar date provided to the attorney in *Pioneer*. In *Pioneer*, the Supreme Court was concerned that a chapter 11 notice of the bar date for filing proofs of claim was outside the ordinary course in bankruptcy cases. The Supreme Court adopted the Circuit's determination that the bar date should have been more prominently announced and should have been accompanied by an explanation of its significance. Because it was not, it left a "dramatic ambiguity" in the notification. *Pioneer*, 113 S. Ct. at 1499-1500. In *Pioneer*, the notice of the claims bar date[22] differed from the model notice set out in Official Bankruptcy Form 16.[23] The court found that only an attorney with extensive

---

[22] The notice in *Pioneer* stated "[y]ou must file a proof of claim if your claim is scheduled as disputed, contingent or unliquidated, is unlisted or you do not agree with the amount. See 11 U.S.C. Sec. 1111 & Bankruptcy rule 3003. Bar date is August 3, 1989." *Pioneer*, S. Ct. 113 at 1492.

[23] Official Form 16 is the September, 1986, version of the *Order for Meeting of Creditors and Related Orders, Combined with Notice Thereof and of Automatic Stay*. It has since been replaced and is represented by Form 9. Official Form 16 contained the following language:

FILING OF CLAIMS

[For a chapter 11 case] The debtor [or, trustee] has filed or will file a list of creditors and equity security holders pursuant to Rule 1007. Any creditor holding a listed claim which is not listed as disputed, contingent, or unliquidated as to amount, may, but need not, file a proof of claim in this case. Creditors whose claims are not listed or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim on or before _____, which date is hereby fixed as the last day for filing a proof of claim [or, if appropriate, on or before a date to be later fixed of which you will be notified]. Any creditor who desires to rely on the list has the responsibility for determining that he (sic) is accurately listed.

experience in bankruptcy would know that the date appended to the end of the notice was intended to be the final date for filing proofs of claim, especially in light of the placement of the notice. *Pioneer*, 113 S. Ct. at 1494.

The Applicants find fault with two aspects of the Notice. First, they assert more specificity regarding the exact nature of administrative severance claims should have been included. Second, they challenge the lack of an exact date for the effective date. Neither point is well taken because this Notice differs significantly from that in *Pioneer*. This Notice contained the following information: 1) a notice that the plan was confirmed, 2) notice of the projected effective date, 3) notice that holders of claims and interests' rights had now merged into a right to participate in the distributions or rights contained in the Plan, and 4) notice of the bar dates for seven types of claims.

The Notice in this case has no Official Form and therefore there is no customary notice from which this deviates. The title to the Notice specifically draws the readers attention to the fact that the Notice contains deadlines for filing certain claims (not "bar" dates - a term susceptible to a variety of meanings). The Notice informs the reader that if administrative claims are not filed, the claims may be disallowed forever, thus establishing with even more certainty than Official Form 16 the significance of the bar date. Both the placement and the explanation of the deadline's significance is prominently announced. The Applicants' complaint that the Notice should have described all possible types of administrative claims, would only have served to lengthen the Notice, and was unnecessary when considered in conjunction with the Disclosure Statement and Plan. A clearer reference to administrative claims would be difficult to draft without adding a degree of complication that would, of itself, create confusion.

The Notice indicates that claims must be filed within thirty 30 days from the effective date. It sets forth the presumptive effective date. It directs the reader to CF&I's attorneys if additional information regarding the effective date is required. The effective date was in fact the date set forth in the Notice, and is two days later than the date of sale indicated on the WARN Act notices forwarded to all the Applicants on December 30, 1992. The Notice was approved by the court in light of the circumstances surrounding confirmation, and in light of the difficulty in closing the very complex Asset Purchase Agreement on an exact date. In fact, the effective date was just as projected. Counsel filed the Application within the bar date. There is no credible evidence that any of this group of Applicants were mislead in any way by the manner in which the effective date was announced. To the contrary, those who inquired regarding the necessity for filing claims did so prior to the bar date. How more indelibly could the effective date of the plan be etched in the memory of these Applicants than that they ceased their relationship with CF&I on March 3, 1993? The Notice of the date for filing administrative severance claims is perfectly correct under the circumstances of this case, and the Applicants cannot be heard to complain since they evidenced no confusion whatsoever regarding the bar date.[24]

---

[24] The Applicants raise several complaints regarding the general prosecution of this chapter 11 proceeding that they assert are inequitable. All the complaints are without merit and do not warrant further comment save one. That is the assertion that CF&I has, all in all, treated these claimants "shabbily". It would be easy to dismiss this assertion as mere rhetoric were it not for the impression it may leave in the minds of these Applicants that a kernel of truth supports the statement. Therefore, it is essential to emphasize the effort the majority of the participants in this confirmation process employed to structure a reorganization that would continue the employment of the maximum number of CF&I's employees. CF&I was at the forefront of that effort. These Applicants may not recognize how close this reorganization was to conversion to a chapter 7. It was only the considerable efforts of the majority of the parties, including CF&I, that structured a plan calling for liquidation of the assets of CF&I in such a manner that the major beneficiaries were employees who were rehired by CF&I Steel, L.P.

Taken in its totality, and applying the standards articulated in *Pioneer*, the Applicants have failed to sustain their burden of proving mistake or excusable neglect. The Applicants' alternative motion to vacate the prior bar date, extend the bar date and require the Reorganized Debtors to give notice thereof is denied.

Therefore, it is hereby

ORDERED, that the Reorganized Debtors' objection to the Application is sustained on procedural grounds and the Application is disallowed.

DATED this 4 day of ~~March~~, 1994.

JUDITH A. BOULDEN
United States Bankruptcy Judge