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How A Union Fight Played A Key Role In Yellow's Bankruptcy

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Trucking giant Yellow Corp. skuttled operations and filed for bankruptcy protection in the U.S. Bankruptcy Court for the District of Delaware on Aug. 6,[1] a mere three years after receiving \$700 million in pandemic-era relief funding from the federal government.

Over 30,000 employees lost their jobs. The 99-year-old company will liquidate in Chapter 11, and employees who are owed wages and benefits as well as this country's taxpayers are among the creditors of the bankrupt company that will not be made whole.

A contentious environment emerged between the company and the International Brotherhood of Teamsters, which represents 22,000 of Yellow's unionized workers. Yellow's efforts to address its issues with the union included informing President Joe Biden's administration of the seriousness of the situation in order to garner assistance.

The company ultimately sued the union in June alleging it was unjustifiably blocking restructuring plans necessary for the very survival of the business, a point viewed by the Teamsters as baseless. Concessions on wages and pension benefits were made by the Teamsters as part of very recent labor negotiations and averted a feared strike.

These concessions followed prior concessions. Nevertheless, substantial liquidity problems resulting in a cash burn estimated between \$9 million to \$10 million each day and an inability to implement a workable plan required a prompt shut down.

Finger-pointing between company and union representatives appear to be front and center at the early stages of the bankruptcy case.

Matthew Doheny, chief restructuring officer of the company, indicated that Yellow's severe liquidity crisis was orchestrated by the Teamsters union leadership through breaches of the parties' collective bargaining agreement designed to block implementation of a vital strategic initiative.[2]

Doheny indicated that Teamsters leadership engaged in a very public dressing down of the company designed to "weaken Yellow, scare off

Yellow's customers, inhibit Yellow's ability to refinance its debt, and to generally erode market confidence in Yellow's ability to continue as a going concern." [3] In other words, the Teamsters decided to pay hardball.

The president of the Teamsters, Sean O'Brien, according to Yellow, "knowingly and intentionally triggered a death spiral" through stonewalling the company's implementation of its restructuring plans. [4] According to Yellow, the company's "debt obligations did not cause Yellow to commence [the bankruptcy] cases." [5]

Counsel for the company recently blasted the Teamsters who, he indicated, were solely responsible for the need for bankruptcy and the loss of thousands of jobs. [6]

O'Brien responded that it was decades of gross mismanagement that precipitated the bankruptcy filing. He contended that "Yellow has historically proven that it could not manage itself despite billions of dollars in worker concessions and hundreds of millions in bailout funding from the federal government." [7]

Shortly after Yellow announced it would cease operations and filed for bankruptcy, workers filed class actions in federal court for violations under federal and state Worker Adjustment and Retraining Notification Act laws that impose at least a 60-day notice period for closings and layoffs. [8]

Yellow had its first-day hearings in bankruptcy court on Aug. 9. Counsel for Yellow indicated that there is no prospect for a reorganization or going concern sale, saying shipments fell off a cliff, and the company was required to shut down. He next outlined the process for liquidation and timing issues that were material to a value maximizing outcome.

The bankruptcy judge expressed his appreciation for the challenges of the case and approved customary first-day relief on an interim basis, including permission to use cash collateral over a five-day period to pay \$16 million in wages and \$2.6 million in insurance premiums, as well as other budgeted items.

Substantial additional financing will be critical to a successful liquidation and orderly wind-down. Yellow has secured multiple proposals for debtor-in-possession financing that are under consideration and in negotiations by key stakeholders, including a proposal for a \$142.5 million credit facility.

The relationships and priorities among the various lien holders, which include the U.S. Department of the Treasury, and assessments of asset values will affect the implementation of what is expected to be an expedited sale process for all assets, including a substantial portfolio of real estate and thousands of trucks and trailers.

Future hearings in the coming days will largely resolve the need for capital as well as contemplate sale process and timing issues. Some stakeholders have expressed concerns that, presently, there are no buyers for Yellow's assets.

As such, sufficient time is necessary to market and sell the assets — however, the greater the time, the greater the financing need.[9] A supported, court-approved process will undoubtedly have to strike a balance between the need for additional secured debt financing and sufficient time for a process that gives buyers the ability to complete due diligence and execute on a sale transaction.

Yellow's bankruptcy is significant. The debtors have approximately \$1.2 billion in total funded debt obligations. The Department of the Treasury is a major stakeholder, holding term loans of approximately \$737 million that were issued.

Additionally, the U.S. government has received an equity stake in the company equal to 29.6% of common stock of Yellow as taxpayer compensation.

The substantial debt and inability of the union and management to reach an accord doomed the future of a major player in the transportation industry. The bankruptcy will affect the market and create supply chain issues, to be sure.

However, its impact on stakeholders that include debt financing sources, the Treasury — i.e., taxpayers — general unsecured creditors, equity holders and employees who are left to divide the value garnered from the disposition of Yellow's assets in accordance with the bankruptcy law's priority scheme will be severe for many.

Rank-and-file employees of Yellow who have already lost their jobs as part of the business failure will also lose wages and bargained-for benefits.[10] O'Brien said in a statement that "hardworking people routinely get left behind in this process when they should be at the front of the line to be paid and protected for the sacrifices they make to American employers." [11]

Speaking for the Teamsters, he said "corporate bankruptcy legislation in the U.S. is a joke" and has, in the face of Yellow's bankruptcy filing, advocated for reforms to current bankruptcy law to better protect wage claims and collective bargaining agreements.[12]

That perspective ignores the Teamsters' role in the failed negotiations that were instrumental to the company's demise in this case. It also ignores the delicate balance that Congress struck when enacting Chapter 11 — a collective proceeding that requires a sharing of losses by similarly situated stakeholders.

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[1] BKY Case No. 23-11069 (Bankr. D. Del. Aug. 6, 2023) (Judge Craig T. Goldblatt).

[2] Declaration of Matthew A. Doheny, Chief Restructuring Officer of Yellow Corporation, in Support of the Debtor's Chapter 11 Petitions and First Day Motions ¶ 2 (August 7, 2023) (Dkt. No. 14). The initiative was a restructuring plan intended to modernize and upgrade efficiency of operation to permit more successful competition against non-unionized carriers. Id. ¶ 3.

[3] Id. ¶ 7.

[4] Id. ¶ 9.

[5] Id. ¶ 18.

[6] Interview with Marc Kasowitz, Teamsters President Sean O'Brien on what sunk Yellow, Fox Business (Aug. 8, 2023).

[7] Elizabeth Napolitano, Yellow is shutting down after 99 Years. Here's what happened. CBS News, Moneywatch (July 31, 2023) (quoting Teamsters General President Sean M. O'Brien).

[8] BKY Adv. Nos. 23-050456 through -58 CTG (Bankr. D. Del. Aug. 7, 2023). The Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. § 2101 et seq., requires employers with 100 or more full-time employees to provide at least 60 calendar days advance written notice of a worksite closing impacting 50 or more employees. Not all dislocations and terminations, however, require a 60-day notice, as the WARN Act and companion state statutes make certain exceptions to the requirements. The employee defendants are seeking allowed claims in the bankruptcy for, among other things, unpaid wages, salaries, commissions, holiday pay, severance, pension and other benefits together with penalties and priority claim status for at least portions of the claim.

[9] The \$142.5 million proposed financing proposal that has been presented currently contemplates a 90-day sale process.

[10] Each individual employee will be entitled to a priority "claim" under the Bankruptcy Code for unpaid wages, salaries and commissions up to \$15,150. See 11 U.S.C. §§ 507(a)(4), 1129(a)(9). Employees are therefore entitled, as a matter of congressional policy, to an elevated claim in bankruptcy proceeding over other unsecured creditors, at least with respect to a portion of their wages.

[11] Dietrich Knauth, Teamsters union pushes for US bankruptcy reform after Yellow's collapse, Reuters (Aug. 8, 2023).

[12] Id.

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