ALERT
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BANKRUPTCY, INSOLVENCY & RESTRUCTURING
News Concerning Recent Bankruptcy Issues

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RETIREES FIND THAT EMPLOYER'S BANKRUPTCY MAY BE A GOOD THING

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In deciding a question never before addressed by a circuit level court, the U.S. Court of Appeals for the Third Circuit, in In re Visteon, No. 10-1944 (July 13, 2010), held that the plain language of section 1114 of the Bankruptcy Code forbids a debtor from modifying or terminating retiree benefits without first complying with that section's procedural and substantive safeguards—notwithstanding that the debtor would have been able to modify or terminate such benefits at will outside of bankruptcy. The court declined to follow contrary lower court precedent, including a recent decision of the U.S. Bankruptcy Court for the Southern District of New York.

BACKGROUND

Since its spin-off from Ford Motor Corporation in 2000, Visteon Corporation has been one of the world's largest suppliers of automotive parts. A victim of the sharp downturn in the domestic automotive industry, on May 28, 2009 Visteon filed a petition for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware, and has since been operating as a debtor-in-possession.

Visteon provided its retired employees with certain health and life insurance benefits (the "retiree benefits"), which are memorialized in various collective bargaining agreements and summary plan descriptions. However, under all applicable agreements and other documents, Visteon reserved the right to unilaterally "suspend, amend or terminate" any or all of the retiree benefits at any time. There is no dispute that Visteon possessed such right under non-bankruptcy law.

SECTION 1114 OF THE BANKRUPTCY CODE

Designed to protect retirees' benefits, Bankruptcy Code section 1114 provides a comprehensive set of procedural and substantive safeguards with which a debtor *must* comply before modifying or terminating any "retiree benefits"—a term, importantly, that is broadly defined. Section 1114(a) defines "retiree benefits" as:

> *payments to any entity or person for the purpose of providing or reimbursing payments for retired employees ... for ... benefits ... under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.*

The retiree benefits are primarily safeguarded by section 1114(g), which requires a debtor, prior to modification, to obtain a court order finding that such modification: (i) is necessary to permit the debtor's reorganization, (ii) assures that all creditors, the debtor, and all affected parties are treated fairly and equally, and (iii) is clearly favored by the balance of the equities.

THE COURT OF APPEALS' DECISION AND ANALYSIS

SUMMARY OF HOLDING

The court held that section 1114(a)'s definition of "retiree benefits" contains no exception for retiree benefits that are terminable-at-will under non-bankruptcy law. Since such benefits may constitute "retiree benefits" for purposes of that section, the court reversed the lower courts, and held that Visteon may not terminate the retiree benefits without first following section 1114's requirements.

THE STATUTE'S LACK OF AMBIGUITY

The court of appeals began its analysis by holding that section 1114—in particular its definition of "retiree benefits"—is unambiguous, and, consequently, must be enforced according to its plain language. The court focused on the plain meaning of the statute's definition of "retiree benefits," and stated, "Payments made during bankruptcy under a plan that is terminable at will are unambiguously 'retiree benefits' under this definition."

The appellees argued that section 1114 is ambiguous "because it does not specifically address whether benefits which could be unilaterally terminated outside of bankruptcy

are 'retiree benefits.'" Id. at 34-35. The court of appeals dismissed this argument forcefully, stating, "[T]hat is not an ambiguity. Language is ambiguous only if it is reasonably susceptible of different interpretations. It is impossible to read the plain language of § 1114 as excluding benefits which are terminable outside of bankruptcy because, as we have explained, they are plainly 'payments to any entity or person under any plan, fund, or program.'"

The court explained that the statute is not rendered ambiguous simply because it does not mention specific types or categories of benefits. Rather, the statute is intentionally broad, and plainly encompasses all benefits within the scope of its language.

CONGRESSIONAL INTENT

Next, the appellees argued that even if the statute is unambiguous, interpreting "retiree benefits" under section 1114 to include benefits under an otherwise terminable-at-will plan would be contrary to the intent of Congress, as evidenced by the legislative history of section 1114. As described by the court, the appellees "rely on certain legislators' statements that § 1114 would prevent debtors from reneging on their 'promises' or their 'legal and contractual obligations.'" Id. at 57. The court struck down this argument just as forcefully as it had the appellees' previous one. The court characterized the appellees as "seizing on snippets of legislative history."

ABSURDITY

Finally, the appellees argued that even if the statute is unambiguous, the inclusion of otherwise terminable-at-will benefits as "retiree benefits" for purposes of section 1114 is a result so absurd that the court should ignore the statute's plain language, and, instead, impose an interpretation that would exclude such benefits from the protections of section 1114. This alleged absurdity, the appellees argued, would result from retirees' pre-petition rights becoming enhanced due to the commencement of a bankruptcy case. Such enhancement, the appellees reasoned, would run afoul of the bankruptcy maxim that the pendency of a bankruptcy case does not serve to enlarge parties' non-bankruptcy law rights.

The court responded to this argument by stating that "although property interests are usually defined by non-bankruptcy law, 'a federal interest may require a different result.'" Section 1114, the court continued, is an example of just such a "different result."

With respect to the appellees' claim of absurdity, the court stated, "[W]e point out that this argument sets far too low a bar for absurdity." The court explained, "Far from being 'absurd,' a literal interpretation of §1114 reveals a remedial and equitable statutory scheme that, consistent with Congress' concerns . . . attempts to prevent the human dimension of terminating retiree benefits from being obscured by the business of bankruptcy. Id. at 93-94.

SIGNIFICANCE OF THIS DECISION

This is the first circuit level decision squarely interpreting the scope of Bankruptcy Code section 1114. In ruling that "retiree benefits" include benefits otherwise terminable-at-will, the court not only set precedent within the Third Circuit, but declined to follow, and, indeed, criticized, a number of reported decisions, including the recent decision of the U.S. Bankruptcy Court for the Southern District of New York in In re Delphi Corp., No. 05-44481, 2009 WL 637315 (Mar. 10, 2009).

This is a victory for retired employees of debtors throughout the Third Circuit—and perhaps in other jurisdictions whose courts may be influenced by the Visteon decision. Many retirees will now enjoy greater protection if their former employer files for bankruptcy than they would otherwise have had. From a debtor's point of view, though, this ruling may reduce its ability to make cuts that, although painful for the retiree, may be necessary to ensure the debtor's survival and emergence from bankruptcy. Further, for a company contemplating bankruptcy, this ruling may result in an even more difficult decision—to decide whether to exercise the unilateral right to terminate its benefits pre-filing in order to avoid presenting the issue to the bankruptcy court.