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## *IUE-CWA v. Visteon Corp.* – Solidifying the Third Circuit’s Strict Constructionist Approach to Statutory Interpretation

### A Victory for Retirees of Distressed Companies

The United States Court of Appeals for the Third Circuit’s recent opinion in *In re Visteon Corp.*<sup>1</sup> is a significant victory for retirees whose rights could be impaired in a chapter 11 case, and further signals the court’s inclination toward strict statutory construction. Following *In re Visteon Corp.*, a debtor whose retiree benefits plans include the unilateral right to terminate such plans at any time will nevertheless be required to comply with section 1114 of the Bankruptcy Code in order to terminate such plans postpetition as well as during the six-month period prior to commencing bankruptcy.

In reaching its decision, the Third Circuit applied the plain meaning rule to section 1114, finding that the Bankruptcy Code unambiguously requires that payments under retiree benefit plans can be terminated only in compliance with the procedures set forth in section 1114, notwithstanding any contractual language to the contrary. The decision is directly at odds with *In re Delphi Corp.*,<sup>2</sup> as well as the Second Circuit’s decision in *In re Chateaugay Corp.*,<sup>3</sup> and could have strategic implications for distressed companies with significant retiree benefits obligations considering filing for bankruptcy.

#### Background

In 2000, Ford Motor Company divested itself of Visteon Corporation (“**Visteon**”), one of the world’s largest automotive parts suppliers. In that process, Visteon assumed operation of two plants in Indiana. The IUE-CWA represents retirees and other hourly workers who had been employed at the plants until they were closed in 2007 and 2008, respectively. Since the

<sup>1</sup> *IUE-CWA v. Visteon Corp. (In re Visteon Corp.)*, No. 10-1944, 2010 WL 2735715 (3d Cir. July 13, 2010).

<sup>2</sup> *In re Delphi Corp.*, No. 05-44481, 2009 WL 637315 (Bankr. S.D.N.Y. Mar. 10, 2009); see Final Order Under 11 U.S.C. §§ 105, 363(b)(1), 1108 and 1114(d) (I) Confirming Debtors’ Authority to Terminate Employer-Paid Post-Retirement Health Care Benefits and Employer-Paid Post-Retirement Life Insurance Benefits For Certain (A) Salaried Employees and (B) Retirees and Their Surviving Spouses and (II) Amending Scope and Establishing Deadline For Completion of Retirees’ Committee’s Responsibilities, *In re Delphi Corp.*, No. 05-44481, 2009 WL 637315 (Bankr. S.D.N.Y. Mar. 10, 2009), ECF No. 16448.

<sup>3</sup> *In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991).

1970s, Visteon's successive collective bargaining agreements provided medical and life insurance benefits to retirees from these plants (the "**Benefits**"). In all of these agreements, as well as in other statements regarding the relevant retiree benefit plans, Visteon expressed its desire to provide the retirees with Benefits for life. At all times, however, Visteon explicitly reserved the right to terminate or modify any and all of the Benefits unilaterally and without reservation. Visteon filed for chapter 11 bankruptcy in the District of Delaware on May 28, 2009. Soon thereafter, Visteon sought court authorization to unilaterally terminate its retiree benefit plans under section 363 of the Bankruptcy Code.<sup>4</sup> The IUE-CWA argued that Visteon's termination of the plans, without first negotiating in good faith with the retirees' authorized representative, violated section 1114 of the Bankruptcy Code. Visteon argued that it was not required to comply with section 1114 because it had the unilateral right to terminate its retiree benefit plans pursuant to their terms.

### Section 1114 of the Bankruptcy Code

Section 1114(a) of the Bankruptcy Code defines "retiree benefits" as those medical and life insurance retiree benefits granted prior to filing for bankruptcy "to any entity or person . . . under any plan, fund, or program."<sup>5</sup> If a retirement plan meets section 1114(a)'s definition, "the debtor in possession, or the trustee if one has been appointed . . . shall timely pay and shall not modify any retiree benefits," unless either (i) the court orders a modification thereof or (ii) the debtor in possession and the recipients agree to a modification.<sup>6</sup>

Section 1114(f) requires that before any modification can be made, the debtor and the retirees' authorized representative must "confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits."<sup>7</sup> Absent an agreement between the debtor and the retirees' authorized representative, the debtor only would be able to modify retiree benefits by seeking to do so under section 1114(g) of the Bankruptcy Code, which allows a debtor to modify retiree benefits if (i) the court finds that the trustee or debtor in possession has proposed a modification consistent with the good faith requirement described above, (ii) the authorized representative "refused to accept such proposal without good cause," and (iii) the modification is "clearly favored by the balance of the equities."<sup>8</sup>

Section 1114 also provides that the debtor may not modify retiree benefits "during the 180-day period ending on the date of the filing of the petition."<sup>9</sup> If the debtor does so, and it is determined that the debtor was "insolvent on the date such benefits were modified," then the court "shall issue an order reinstating as of the date the modification was made, such benefits as in

<sup>4</sup> The debtor's motivation for moving under section 363 as opposed to section 1114 of the Bankruptcy Code is that it would only need to satisfy the business judgment standard in electing to terminate the retiree benefit plans, as opposed to complying with the more stringent requirements set forth in section 1114.

<sup>5</sup> § 1114(a).

<sup>6</sup> § 1114(e)(1).

<sup>7</sup> § 1114(f)(2).

<sup>8</sup> § 1114(g)(1)–(3). Section 1114(g) also precludes the court from allowing a modification that results in "a level lower than that proposed by the trustee." § 1114(g).

<sup>9</sup> § 1114(l).

effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.”<sup>10</sup> Thus, section 1114’s protections extend to the prepetition period as well as for the duration of the bankruptcy proceedings.

### Lower Court Decisions

Following a multiday hearing, the bankruptcy court concluded that Visteon was not required to comply with section 1114 of the Bankruptcy Code because the retiree benefit plans contained a provision granting Visteon the unilateral right to terminate its retiree benefit plans. On appeal, the District Court affirmed the bankruptcy court’s order, notwithstanding its acknowledgement that IUE-CWA’s reading of section 1114 might “seem legitimate based on a plain reading of the statute.”<sup>11</sup> In doing so, the District Court stated that to prevent Visteon from terminating its r

etiree benefit plans given its unilateral right to do so would effect “a unique if not revolutionary interpretation of the Bankruptcy Code by improving on the pre-petition, contractual rights of a third party constituent as a result of the filing of [a] bankruptcy case.”<sup>12</sup>

### The Third Circuit’s Opinion

The United States Court of Appeals for the Third Circuit reversed the District Court’s interpretation of section 1114. The Third Circuit applied the so-called “plain meaning rule” to conclude that section 1114 is unambiguous and “clearly applies to any and all retiree benefits,” including those at issue in Visteon’s motion before the bankruptcy court. The court, however, recognized that “the majority of bankruptcy and district courts that have addressed this issue have concluded that § 1114 does not limit a debtor’s ability to terminate benefits during bankruptcy when it has reserved the right to do so in the applicable plan documents.”<sup>13</sup> Moreover, it specifically noted that its conclusion “appears to be in tension with the decision of the Court of Appeals for the Second Circuit in *LTV Steel Co. v. United Mine Workers (In re Chateaugay Corp.)*.”<sup>14</sup> Nevertheless, the Third Circuit was convinced that the aforementioned courts had “mistakenly relied on their own views about sensible policy, rather than on the congressional policy choice reflected in the unambiguous language of the statute.”<sup>15</sup>

In reaching its conclusion, the Third Circuit relied on three significant factors. First, it noted that although Congress had explicitly excluded certain benefits from the scope of section 1114, such as retiree “benefits provided for purposes other than

<sup>10</sup> § 1114(l)(1)–(2).

<sup>11</sup> *In re Visteon Corp.*, No. 10-91, 2010 WL 1416796, at \*3 (D. Del. Apr. 8, 2010).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at \*7; see, e.g., *Retired W. Union Employees Ass’n v. New Valley Corp. (In re New Valley Corp.)*, No. 92-4884, 1993 WL 818245 (D.N.J. Jan. 28, 1993); *In re Delphi Corp.*, No. 05-44481, 2009 WL 637315 (Bankr. S.D.N.Y. Mar. 10, 2009); *In re N. Am. Royalties, Inc.*, 276 B.R. 860 (Bankr. E.D. Tenn. 2002); *In re Dorskocil Cos.*, 130 B.R. 870 (Bankr. D. Kan. 1991). *But see Ames Dep’t Stores, Inc. v. Employees’ Comm. of Ames Dep’t Stores, Inc. (In re Ames Dep’t Stores, Inc.)*, Nos. 92 Civ. 6145–46, 1992 WL 373492 (S.D.N.Y. Nov. 30, 1992); *In re Farmland Indus., Inc.*, 294 B.R. 903 (Bankr. W.D. Mo. 2003).

<sup>14</sup> *In re Visteon Corp.*, 2010 WL 2735715, at \*7 (citation omitted).

<sup>15</sup> *Id.*

health, accident, disability or death; or to benefits provided to high-income retirees able to obtain comparable coverage; or to benefits contemplated, but not maintained or established, prior to the debtor's filing for bankruptcy. . . . Congress did not limit § 1114's otherwise broad scope based on whether or not the debtor reserved a right to terminate in its [retiree benefit plans]."<sup>16</sup> The court reasoned that had Congress intended to exclude retiree benefit plans that contain a unilateral right to terminate benefits from the protections afforded by section 1114, Congress would have done so specifically.

Second, the court also relied on the 2005 addition of subparagraph (l) to section 1114 to support its conclusion.<sup>17</sup> Section 1114(l) provides that "[i]f the debtor, during the 180-day period ending on the date of the filing of the petition— (1) modified retiree benefits; and (2) was insolvent on the date such benefits were modified; the court . . . shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification."<sup>18</sup> The court reasoned that if section 1114 were construed to exclude retiree benefits plans with a unilateral right to terminate, then section 1114(l) "would be virtually meaningless . . . [because] [o]utside of the bankruptcy context, an employer is already prohibited by various laws, including ERISA, the Labor-Management Relations Act of 1947, codified in various sections of 29 U.S.C., and basic principles of contract law, from modifying those benefits it is obligated to provide. Subsection (l) therefore has meaning only if it adds something new, namely, the protection of benefits a would-be debtor could otherwise terminate at will."<sup>19</sup>

Third, the court noted that unless a statute "produces a result demonstrably at odds with the intentions of its drafters . . . or an outcome so bizarre that Congress could not have intended it," the court's responsibility is to adhere to the plain meaning of the statute.<sup>20</sup> The court concluded (having determined both that the statute was unambiguous and that it was not at odds with congressional intent<sup>21</sup>) that its reading of section 1114, even though it would enhance a retiree's rights in the context of a chapter 11 case, was not within the realm of being "demonstrably at odds with the intention of its drafters" nor "so bizarre that Congress could not have intended it." In reaching its conclusion, the court acknowledged the generally accepted position that "prepetition contract rights and property interests should not be analyzed differently or enhanced simply because an interested party is involved in a bankruptcy case."<sup>22</sup> The court, however, also adopted the holding of *Butner v. United States* recognizing that "[t]he constitutional authority of Congress to establish 'uniform Laws on the subject of Bankruptcies throughout the United States' would clearly encompass a federal statute' modifying underlying

<sup>16</sup> *Id.* at \*8.

<sup>17</sup> Section 1114(l) was enacted pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23.

<sup>18</sup> § 1114(l).

<sup>19</sup> *Id.* at \*13.

<sup>20</sup> *Id.* at \*14 (alteration in original) (quoting *Mitchell v. Horn*, 318 F.3d 523, 535 (3d Cir. 2003)).

<sup>21</sup> The court reached this conclusion notwithstanding the debtor's argument that because "[i]n 2007, bills were introduced in both houses of Congress which would have added a clause stating that § 1114's protections apply 'whether or not the debtor asserts a right to unilaterally modify such payments under such plan, fund, or program' [and] [n]either bill was enacted . . . that Congress' consideration and rejection of these amendments indicates both that § 1114 does not apply to benefits that are terminable at will, and that Congress concluded that extending protection to such benefits was unwise." *In re Visteon Corp.*, 2010 WL 2735715, at \*18 (citations omitted).

<sup>22</sup> *Id.* at \*19 (quoting Brief of Debtors-Appellees at 33, *In re Visteon Corp.*, No. 10-1944, 2010 WL 2735715 (3d Cir. July 13, 2010) (quoting *In re Delphi Corp.*, No. 05-44481, 2009 WL 637315, at \*2 (Bankr. S.D.N.Y. Mar. 10, 2009)).

property rights for the purposes of bankruptcy.”<sup>23</sup> Thus, “although property interests are usually defined by non-bankruptcy law, a ‘federal interest [may] require[] a different result.’”<sup>24</sup>

### Implications of the Third Circuit’s Decision

From a macro-perspective, the Visteon decision, which follows a decision earlier this year in *In re Philadelphia Newspapers, LLC*,<sup>25</sup> highlights the Third Circuit’s tendency toward narrow and strict statutory construction. Moreover, due to the importance of Third Circuit decisions generally on bankruptcy matters, and the apparent split in circuits in this regard, prudence would dictate that would-be debtors choreographing a bankruptcy strategy should assume that the position espoused by the Third Circuit could ultimately apply uniformly across the circuits.

Prospective debtors with significant employee retirement benefit obligations will need to carefully consider their options regarding termination of their retiree benefit plans if they intend to terminate the plans in chapter 11. Given that section 1114(l) provides that a debtor may not modify medical benefits in the 180-day period immediately preceding the filing of a bankruptcy petition “unless the court finds that the balance of the equities clearly favors such modification,”<sup>26</sup> a would-be debtor should assume that it must terminate its retiree medical plans more than 180 days prior to filing for chapter 11, if it is considering doing so. Such an advanced termination is not always feasible given the planning runway involved, and the potential signal that a termination might send to the market-place at a time when the company is not under the protections of chapter 11.

<sup>23</sup> *In re Visteon Corp.*, 2010 WL 2735715, at \*19 (quoting *Butner v. United States*, 440 U.S. 48, 54 (1979) (quoting U.S. Const., art. I, § 8, cl. 4)).

<sup>24</sup> *Id.* (alteration in original).

<sup>25</sup> *In re Philadelphia Newspapers, LLC*, 599 F.3d 298 (3d Cir. 2010). In *Philadelphia Newspapers*, the Third Circuit also narrowly construed section 1129(b)(2)(A) of the Bankruptcy Code. For a more complete description of the *Philadelphia Newspapers* decision, see Shearman & Sterling LLP Client Publication: *Recent Case Furthers Trend Towards Limiting Secured Creditors’ Right to Credit Bid in Connection with Sales Under a Debtor’s Plan of Reorganization*, dated April 5, 2010.

<sup>26</sup> § 1114(l).

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