

# Mandatory Premium Payments Due on Account of Postpetition Pension Plan Termination Are Prepetition Contingent Claims

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*A New York bankruptcy court decision will help provide important guidance for determining when contingent claims are prepetition claims subject to being discharged.*

**I**n *Oneida Ltd. v. Pension Benefit Guaranty Corp. (In re Oneida Ltd.)*,<sup>1</sup> the United States Bankruptcy Court for the Southern District of New York addressed whether a premium payment created by the Deficit Reduction Act of 2005 (“DRA”)<sup>2</sup> for pension plans terminated as part of a Chapter 11 restructuring is a prepetition claim or a postpetition administrative expense. The court held that the statutorily mandated premium payment was a contingent prepetition claim and was discharged upon confirmation of the debtor’s plan.

## THE DEFICIT REDUCTION ACT OF 2005

The DRA was enacted in February 2006 to help reduce the deficit in the budget of the Pension Benefit Guaranty Corporation (“PBGC”). The

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PBGC is a federal agency established by the Employee Retirement Income Security Act of 1974 (“ERISA”) that pays participants of terminated pension plans, when the terminated plans lack sufficient assets to make their required payments to participants.<sup>3</sup> The DRA legislation amended ERISA by requiring plan sponsors to pay additional premiums to the PBGC when pension plans are terminated in connection with an in-court or out-of-court restructuring. The court summarized the pertinent part of the DRA as follows:

First, under *subsection (A)*, whenever an employer terminates a single-employer plan under ERISA’s distress termination provisions in connection with a reorganization, whether inside or outside of bankruptcy, it is liable for a special DRA Premium calculated as of the termination date. Second, under *subsection (B)*, when termination takes place in a Chapter 11 proceeding or an analogous proceeding under State law, the obligation to pay the DRA Premium is deemed to arise upon the date of discharge, which is usually the effective date of the plan of reorganization. Third, under *subsection (C)*, the DRA Premium is due at different times for cases in and out-of-court. For cases out-of-court, the Premium is due following the month after pension plan termination; for cases in-court, the Premium is due following the month after discharge.<sup>4</sup>

## **ONEIDA LTD.’S BANKRUPTCY AND PROCEDURAL BACKGROUND**

Oneida Ltd. (“Oneida” or the “Debtor”) created a retirement pension plan for its employees.<sup>5</sup> On March 19, 2006, Oneida filed a petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor’s pension plans were under-funded, and the court approved the Debtor’s request to terminate the pension plans under the distress termination provisions of ERISA.

As a result of the distressed termination, the Debtor became subject to the DRA, which obligated the Debtor to pay a special DRA Premium.<sup>6</sup> The DRA Premium was the Debtor’s only unsecured debt. Prior to con-

firmation of the plan of reorganization, the Debtor and PBGC negotiated a settlement agreement that provided the PBGC with a promissory note in the principal amount of \$3 million for its secured claim (based on liens obtained prepetition for Oneida's failure to make certain minimum funding contributions) and for "any unsecured claim...arising out of the distress termination of certain of the Debtor's pension plans."<sup>7</sup>

Following confirmation of the Debtor's plan, the PBGC and the Debtor entered into a court-approved stipulation regarding the termination of the pension plan. The stipulation preserved the rights of both parties to challenge or enforce the Debtor's responsibility to pay for the premiums due under the DRA.<sup>8</sup> Soon after, the Debtor commenced an adversary proceeding seeking a declaration that the DRA Premium was a prepetition claim that had been satisfied by the \$3 million note and any remaining liability had been discharged under the Debtor's plan of reorganization.

The PBGC moved for a withdrawal of reference of the adversary proceeding under 28 U.S.C. §157(d) asking that the dispute be resolved by the district court. A district court may withdraw a proceeding if it is necessary to consider both Title 11 and other laws effecting interstate commerce; however, where the case presents a "straightforward application of a federal statute to a particular set of facts," it is not mandatory for a court to withdraw the case.<sup>9</sup> In this case, the district court denied PBGC's motion for withdrawal of the reference finding that the bankruptcy court was capable of analyzing ERISA and the DRA to determine whether there was a claim under the Bankruptcy Code. Consequently, the adversary proceeding remained in the bankruptcy court. Both parties then moved for summary judgment.

## **A DRA PREMIUM PAYMENT IS A PREPETITION CONTINGENT CLAIM UNDER THE BANKRUPTCY CODE**

The court first addressed whether the DRA Premium was a "claim" under the Bankruptcy Code. Pursuant to subsection (B) of the DRA, when a debtor is in Chapter 11, the obligation to pay a DRA Premium arises at the date of discharge. The Debtor argued that the payment obligation under the DRA was a contingent "claim" under Section 101(5)(A) of

the Bankruptcy Code, which defines a “claim” as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.”<sup>10</sup> In response, the PBGC argued that the DRA Premium was not a “claim,” because the obligation to pay is not enforceable until after the case was over, i.e., on the date of discharge on the effective date of the confirmed Chapter 11 plan.

The court rejected the argument of the PBGC, finding that the DRA Premium was a contingent claim. The court explained that the term “claim” is defined broadly in the Bankruptcy Code, and the definition includes contingent future rights to payment. The court also cited various cases that had found pension liabilities to be “claims” under the Bankruptcy Code.<sup>11</sup>

The court next analyzed whether the contingent claim for the DRA Premium arose prepetition or postpetition. The Debtor argued that the claim was a prepetition claim because the right to payment was contingent and arose prior to the Debtor filing for Chapter 11; therefore, the claim should be discharged upon confirmation of the Debtor’s reorganization plan. The PBGC disagreed and asserted that because the pension plans were terminated postpetition, the termination created a postpetition obligation to pay the DRA Premium. Thus, the PBGC contended, the DRA Premium was an administrative expense claim which the Debtor was required to pay in full upon confirmation of the plan.

In addressing these arguments, the court explained that the Bankruptcy Code does not define when a contingent claim arises; however, in the case of a contingent contract claim, the courts have held that the obligation for payment arises when the future event is “within the actual or presumed contemplation of the parties at the time the original relationship between the parties was created.”<sup>12</sup> The court found that when the contingent claim is created by statute, the claim also should be deemed to arise at the creation of a relationship between the parties, not when the right to payment exists.<sup>13</sup> The court held that the determinative factor in deciding when a contingent claim arises is “whether, at the time of the petition, the parties contemplated that the contingent obligation would exist if the contingency occurred.”<sup>14</sup>

The court found that the relationship between the Debtor and the PBGC that gave rise to the DRA Premium was created prepetition, at the time of the passage of the DRA. At that time, both parties became aware of the potential for future liability that would arise upon termination of the Debtor's pension plan. The court found that the parties thus contemplated the contingent obligation at issue prior to the time the Debtor filed for bankruptcy. Based on this relationship and contemplated liability, the court concluded that the DRA Premium was a prepetition claim that was discharged upon confirmation of the Debtor's plan of reorganization.

The PBGC also argued that even if the DRA Premium was found to be a claim, the claim was barred from being discharged under the doctrine of judicial estoppel. The PBGC argued that because the Debtor included the DRA Premium in cash flow projections produced at the plan confirmation hearing, this indicated that it expected to pay the DRA Premium. The PBGC asserted that, based on this admission, the Debtor should be barred from now asserting that the DRA Premium claim was discharged by confirmation of the plan.

In addressing this argument, the court explained that to support a finding of judicial estoppel, three factors must be present: (i) the second position must be "clearly inconsistent" with an earlier position; (ii) adoption of the second position must "create the perception that either the first or second court was misled;" and (iii) acceptance of the second position must "impose an unfair detriment on the opposing party if not estopped."<sup>15</sup> The court stated that, while the Debtor's inclusion of the DRA Premium in the Debtor's cash flow projections demonstrated the Debtor had the ability to pay the DRA Premium, it did not obligate the Debtor to make the payment nor constitute a statement by the Debtor that intended to make the payment. The court thus found that judicial estoppel did not prevent the Debtor from seeking to discharge the DRA Premium.

## CONCLUSION

Although *Oneida* addresses a specific contingent liability arising from the termination of pension plans under ERISA, the principles the court relied on to conclude that the DRA Premium was a prepetition contingent

claim provide important guidance for other circumstances. Following *Oneida*, when the parties have had a relationship prior to the commencement of the Chapter 11 case that could give rise to a claim, if the claim arises postpetition it will be a prepetition claim — and this includes situations in which the “relationship” is an applicable statute, not merely a contract or other voluntary interaction.

## NOTES

<sup>1</sup> 383 B.R. 29 (Bankr. S.D.N.Y. 2008).

<sup>2</sup> 29 U.S.C. §1306 (2006).

<sup>3</sup> *In re Oneida Ltd.*, 383 B.R. at 32.

<sup>4</sup> *Id.* at 36-37.

<sup>5</sup> *Id.* at 37.

<sup>6</sup> See 29 U.S.C. §1306(a) & (b) (2006).

<sup>7</sup> *In re Oneida Ltd.*, 383 B.R. at 33 (citing *In re Oneida, Ltd.*, 351B.R. 79, 82 (Bankr. S.D.N.Y. 2006)).

<sup>8</sup> *Id.* at 34.

<sup>9</sup> *Id.* at 35 (citing *Oneida Ltd. v. Pension Ben. Guar. Corp.*, 372 B.R. 107, 111 (S.D.N.Y. 2007)).

<sup>10</sup> 11 U.S.C. 101(5)(A).

<sup>11</sup> *In re Oneida Ltd.*, 383 B.R. at 39 (citing *In re Pulaski Highway Express, Inc.*, 57 B.R. 502, 507 (Bankr. M.D. Tenn. 1986) (contingent liabilities with uncertainty “do not defeat the existence of prepetition claims for benefits which accrued prior to withdrawal); *In re Silver Wheel Freightlines, Inc.*, 57 B.R. 476, 478 (Bankr. D. Or. 1985)).

<sup>12</sup> *Id.* at 42-43 (citing *United States v. LTV Corp. (In re Chateaugay Corp.)*, 944 F.2d 997, 1004 (2d Cir. 1997) (citing *In re All Media Props, Inc.*, 5 B.R. 126, 133 (Bankr. S.D. Tex. 1980), *aff'd*, 646 F.2d 193 (5th Cir. 1981)).

<sup>13</sup> *Id.* at 42 (citing *United States v. LTV Corp. (In re Chateaugay Corp.)*, 944 F.2d 997, 1005 (2d Cir. 1997)).

<sup>14</sup> *Id.* at 43.

<sup>15</sup> *Id.* at 45 (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)).