Updates
January 23, 2019

Chapter 11 “Reorganization” Used to Shed Retiree Health Benefit Obligations Required Under the Coal Act

Funding expensive obligations for retiree health benefits, often an impediment to running a financially stable business or even successfully navigating a Chapter 11 bankruptcy process, may no longer present such a problem—at least in the U.S. Court of Appeals for the Eleventh Circuit. The circuit court upheld the termination of a debtor's obligation to provide retiree health benefits under two multiemployer plans created under the Coal Act—the "1992 Benefit Plan" and the "Combined Benefit Fund" —in connection with a sale of the debtor's assets to a third party through a Chapter 11 "reorganization."

Background and Decision

This case arose when Walter Energy sought to sell substantially all of its assets on a going-concern basis in its Chapter 11 case. The sole potential purchaser would acquire the assets only if, among other things, the assets were transferred free and clear of any obligation to provide retiree health care benefits provided for under the Coal Act. The bankruptcy court approved the sale and allowed Walter Energy to terminate its obligation to provide retiree health benefits under section 1114(g) of the Bankruptcy Code, which states, in part: "[t]he court shall enter an order providing for modification in the payment of retiree benefits if the court finds … such modification is necessary to permit reorganization of the debtor…."

The bankruptcy court's order was initially affirmed and was then appealed to the Eleventh Circuit. The circuit court addressed several argument on appeal, including: (1) whether the retiree health benefits were a "tax" on coal companies and therefore outside the purview of section 1114(g) based on the Anti-Injunction Act; (2) whether the retiree health benefits were a program "maintained" by Walter Energy; and (3) whether a sale of assets that would ultimately result in the liquidation of the debtor was a "reorganization" as that term is used in section 1114(g).

The Anti-Injunction Act deprives courts of the jurisdiction to enjoin the collection of a tax. The circuit court opinion provided a detailed analysis of U.S. Supreme Court cases that have created a flexible and functional approach to determine whether something should be considered a "tax." The circuit court also discusses an exception to the Anti-Injunction Act for cases in which no alternative exists to challenge the tax and concluded that the "premiums" owed to the debtor's 1992 Benefit Plan were not taxes and therefore were not subject to the Anti-Injunction Act. With respect to the debtor's "premium" obligations to the Combined Benefit Funds, the circuit court found that Congress "may have indirectly indicated that the premiums and penalties should be treated as taxes for purposes of the Anti-Injunction Act" when providing that any penalty "…shall be treated in the same manner as the tax imposed by section 4980B." However, the circuit court found that an exception to the Anti-Injunction Act existed because there was no alternative method to seek to terminate the obligation to pay the Combined Benefit Fund premiums. Accordingly, there was no jurisdictional bar under the Anti-Injunction Act to the relief granted by the bankruptcy court.

The opinion next addressed the claim that section 1114 did not apply to the retiree health benefits because the requirement to pay premiums was statutorily imposed and therefore the debtor was not "maintaining" the plans. The circuit court, using statutory context and multiple canons of construction, ultimately rejected the argument that a payment must be voluntary in order to quality as "maintaining" a plan.

Finally, the circuit court addressed whether a Chapter 11 *liquidation* was within the definition of reorganization as used in section 1114(g). As set forth in the opinion, "… we interpret the term "reorganization" to refer to all types of debt adjustment under Chapter 11, including a sale of assets on a going-concern basis." The circuit court held that "… to qualify as a reorganization, at a minimum, the business concern must continue to operate." Therefore, a "… liquidation where a debtor sells substantially all of its assets as a going concern also could qualify as a "reorganization" because the debtor's business continues operating as a going concern, albeit under new ownership." The opinion contrasted this to a Chapter 7 liquidation, in which the debtor's business operations are ceased and assets are sold on a piecemeal basis. Therefore, for purposes for section 1114(g), the debtor's Chapter 11 liquidation qualified as a "reorganization" and the bankruptcy court had the authority to terminate the debtor's obligation to pay premiums to the 1992 Benefit Plan and the Combined Benefit Fund.

Future Implications

While ruling in favor of the debtor (and ultimately the purchaser), the Eleventh Circuit stated that several of the issues were "close calls" and that the decisions set forth in the opinion were rendered "as a court interpreting the statutes that Congress has enacted, not as policymakers." The opinion concludes that "if a change in these laws are desirable from a policy standpoint, it is up to Congress to make them." Which begs the ultimate question…will Congress act to avoid this result going forward?

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