

1 UNITED STATES COURT OF APPEALS
2
3 FOR THE SECOND CIRCUIT
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6
7 August Term, 2008
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9 (Argued: January 29, 2009 Decided: April 8, 2009)

10
11 Docket No. 08-2964-bk
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13 - - - - - X
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15 PENSION BENEFIT GUARANTY CORPORATION,
16

17 Defendant-Appellant,
18

19 - against -
20

21 ONEIDA LTD.,
22

23 Plaintiff-Appellee.
24

25 - - - - - X
26
27 Before: POOLER and LIVINGSTON, Circuit Judges, and
28 RAKOFF, District Judge.^{*}
29

30 Direct appeal pursuant to 28 U.S.C. § 158(d)(2) from an
31 Order of the United States Bankruptcy Court, Southern District of
32 New York (Allan L. Gropper, United States Bankruptcy Judge),
33 holding that payments due the Pension Benefit Guaranty
34 Corporation as a result of an employer's termination of a pension
35 plan while undergoing reorganization in bankruptcy are contingent
36 pre-petition claims dischargeable in bankruptcy. Concluding that
37 the payment obligation does not arise in any respect until after
38 bankruptcy, we REVERSE and REMAND for further proceedings.
39

40 JAMES L. EGGEMAN, Assistant Chief Counsel,
41 Pension Benefit Guaranty Corp.,
42 Washington, D.C. (Israel Goldowitz,
43 Chief Counsel, Karen L. Morris, Dep.
44 Chief Counsel, Paula J. Connelly, Asst.

*The Honorable Jed S. Rakoff, United States District Judge
for the Southern District of New York, sitting by designation.

1 Chief Counsel, Lawrence F. Landgraff,
2 Erika E. Barnes, Pension Benefit
3 Guaranty Corp., Greg R. Yates, Charles
4 G. Cole, Steptoe & Johnson LLP, New
5 York, New York, on the briefs), for
6 Defendant-Appellant.
7

8 WILLIAM J.F. ROLL, III, Shearman & Sterling
9 LLP, New York, New York (Jaculin Aaron,
10 Michael H. Torkin, Daniel C. Lewis,
11 Shearman & Sterling LLP, on the brief),
12 for Plaintiff-Appellee.

13 RAKOFF, District Judge.

14 The Pension Benefit Guaranty Corporation ("PBGC") appeals
15 from a judgment of the Bankruptcy Court, Southern District of New
16 York (Allan L. Gropper, B.J.), which held that "Termination
17 Premiums" created by the Deficit Reduction Act of 2005, Pub. L.
18 109-171, 120 Stat. 4 (2006), are pre-petition contingent claims
19 dischargeable in bankruptcy.¹ On May 12, 2008, the parties
20 jointly petitioned for permission to appeal directly from the
21 bankruptcy court pursuant to 28 U.S.C. § 158(d)(2), which grants
22 jurisdiction to the court to hear such an appeal when the
23 question presented "involves a question of law as to which there
24 is no controlling decision of the court of appeals for the
25 circuit or of the Supreme Court of the United States, or involves
26 a matter of public importance." On August 29, 2008, the Court

¹The provision of the Deficit Reduction Act creating the Termination Premiums amended the relevant provision of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1306. The provision was later permanently enacted as part of the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780.

1 granted the joint petition, see Pension Benefit Guar. Corp. v.
2 Oneida, Ltd., No. 08-2964-bk (2d Cir. Aug. 29, 2008), and the
3 matter was subsequently briefed and argued. We now reverse.

4 The PBGC is essentially an insurer of pension funds.
5 "Termination Premiums" paid to the PBGC are designed to help
6 insure employees against the non-payment of pension benefits if
7 the employer terminates a covered fund under specified
8 circumstances. The "General Rule" is that

9 [i]f there is a termination of a single-employer plan
10 [under specified provisions], there shall be payable to
11 the [PBGC], with respect to each applicable 12-month
12 period, a premium at a rate equal to \$1,250 multiplied
13 by the number of individuals who were participants in
14 the plan immediately before the termination date.

15 29 U.S.C. § 1306(a)(7)(A). If, however, the plan is
16 terminated during a bankruptcy reorganization proceeding,
17 then

18 [the General Rule] shall not apply to such plan until
19 the date of the discharge or dismissal of [the
20 employer] in such case.

21 Id. § 1306(a)(7)(B). This is called the "Special Rule."

22 Under the General Rule, the "applicable 12-month period"
23 runs from the "first month following the month in which the
24 termination date occurs" and requires payment for a total of

1 three years. Under the Special Rule, the applicable 12-month
2 period does not commence until "the first month following the
3 month which includes the earliest date as of which each
4 [employer] is discharged or dismissed" from the bankruptcy
5 proceeding. Id. § 1306(a)(7)(C). It is thus apparent from the
6 face of the relevant statutory provisions that "[i]n the case of
7 termination due to reorganization, the liability for the
8 [termination] premium does not arise until the employer is
9 discharged from the reorganization proceeding." Staff of Joint
10 Comm. on Taxation, 109th Cong. Technical Explanation of H.R. 4,
11 the "Pension Protection Act of 2006," as Passed by the House on
12 July 28, 2006, and as Considered by the Senate on August 3, 2006
13 (emphasis added).

14 On March 19, 2006, Oneida, a designer and manufacturer of
15 flatware, filed for Chapter 11 reorganization in bankruptcy. See
16 Oneida Ltd. v. Pension Benefit Guar. Corp. (In re Oneida), 383
17 B.R. 29, 33 (Bankr. S.D.N.Y. 2008). While in bankruptcy, Oneida
18 terminated one of its single-employer, defined-benefit pension
19 plans, the Oneida Plan, pursuant to a stipulation by the instant
20 parties preserving their respective rights to dispute or enforce
21 payment of Termination Premiums. Pension Settlement Agreement ¶
22 5 (May 3, 2006). Oneida then sought a declaratory judgment that
23 the applicable Termination Premium was an unsecured, pre-petition
24 bankruptcy claim under § 101(5) of the Bankruptcy Code. The

1 parties cross-moved for summary judgment and the bankruptcy court
2 issued an opinion on February 27, 2008, and an Amended Order on
3 the Motions for Summary Judgment dated March 21, 2008, from which
4 the PBGC now appeals. With no findings of fact in question, we
5 review the bankruptcy court's conclusions of law de novo. See
6 Shugrue v. Air Line Pilots Ass'n. Int'l, (In re Ionosphere Clubs,
7 Inc.), 922 F.2d 984, 988 (2d Cir. 1990); Gulf States Exploration
8 Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods.
9 Corp.), 896 F.2d 1384, 1388 (2d Cir. 1990).

10 The bankruptcy court believed that the Termination Premiums
11 were dischargeable pre-petition claims because of the broad
12 definition accorded the term "claim" in the bankruptcy context.
13 Specifically, the Bankruptcy Code defines "claim" as a "right to
14 payment, whether or not such right is reduced to judgment,
15 liquidated, unliquidated, fixed, contingent, matured, unmatured,
16 disputed, undisputed, legal, equitable, secured, or unsecured."
17 11 U.S.C. § 101(5) (A). "Congress unquestionably expected this
18 definition to have wide scope." United States v. LTV Corp. (In
19 re Chateaugay Corp.), 944 F.2d 997, 1003 (2d Cir. 1991).

20 At the same time, however, the definition's reach is "not
21 infinite." LTV Steel Co. v. Shalala (In re Chateaugay Corp.), 53
22 F.3d 478, 497 (2d Cir. 1995). Rather, "the existence of a valid
23 bankruptcy claim depends on (1) whether the claimant possessed a
24 right to payment, and (2) whether that right arose before the

1 filing of the petition.” Id. at 497; see also In re Duplan
2 Corp., 212 F.3d 144, 151 (2d Cir. 2000). To make these
3 determinations, we look to the substantive non-bankruptcy law
4 that gives rise to the debtor’s obligation. See Travelers Cas. &
5 Sur. Co. of Am. v. Pac. Gas & Elec. Co., 549 U.S. 443, 450 (2007)
6 (noting that “creditors’ entitlements in bankruptcy arise in the
7 first instance from the underlying substantive law creating the
8 debtor’s obligation” (internal quotations omitted) (quoting
9 Raleigh v. Ill. Dept. of Revenue, 530 U.S. 15, 20 (2000))).

10 Here, the substantive, non-bankruptcy law giving rise to
11 Oneida’s obligation to pay a Termination Premium is the Special
12 Rule, which unambiguously states that where a pension plan is
13 terminated in connection with an employer’s bankruptcy
14 reorganization, the General Rule - which creates the PBGC’s right
15 to a Termination Premium - “shall not apply to such plan until
16 the date of the discharge or dismissal of [the employer].” 29
17 U.S.C. § 1306(a)(7)(B). The obvious purpose of this rule is to
18 prevent employers from evading the Termination Premium while
19 seeking reorganization in bankruptcy. Although in the context of
20 a private contract, this language might not control the question
21 of whether a “claim” existed, Congress may prescribe when a claim
22 will be legally effective for the purposes of the Bankruptcy
23 Code, at least where, as here, the non-bankruptcy statute
24 explicitly discusses how the obligation should be treated in

1 bankruptcy.

2 This, then, is not a situation, as the bankruptcy court
3 erroneously thought, where an obligation has already been created
4 prior to bankruptcy but is subject to a contingency. See In re
5 Oneida, 383 B.R. at 38-39. Rather, an employer's obligation to
6 pay a Termination Premium on a pension plan that is terminated
7 during the course of the bankruptcy does not even arise until the
8 bankruptcy itself is terminated. No matter how broadly the term
9 "claim" is construed, it cannot extend to a right to payment that
10 does not yet exist under federal law.

11 If there is any ambiguity in the statutory language of the
12 Special Rule - and we perceive none - it is resolved in the
13 PBGC's favor by the legislative history of the Deficit Reduction
14 Act and the Pension Protection Act. The Termination Premiums
15 were established in response to mounting financial pressure on
16 the PBGC as a result of an increasing number of pension plan
17 terminations. See H.R. Rep. 109-276, at 345-48 (2005).²
18 Congress recognized, however, that its Termination Premium
19 program could be jeopardized by employers seeking bankruptcy

²The 109th Congress considered the Termination Premiums in two budget reconciliation bills, H.R. 4241, 109th Cong. (2005) and S. 1932, 109th Cong. (2005), and two pension reform bills, H.R. 2830 (Pension Protection Act of 2005), 109th Cong. (2005), (which was the predecessor to the bill passed in 2006), and S. 1783 (Pension Security and Transparency Act), 109th Cong. (2005), (which was later reconciled with H.R. 2830 to include termination premiums).

1 protection. It thus created the Special Rule. The House
2 Committee on Education and the Workforce stated:

3 [T]he Committee believes that a termination premium for
4 former plan sponsors who initiate and complete a
5 distress termination while in bankruptcy is
6 appropriate. The bankruptcy courts should not be used
7 as a mechanism for eliminating the burden of an
8 underfunded pension plan; therefore, an additional
9 premium paid to the PBGC to recognize the agency's
10 assumption of unfunded plan liabilities is reasonable.

11 H.R. Rep. No. 109-276, at 348. Treating the Special Rule's
12 Termination Premium as a pre-petition claim would therefore
13 directly thwart Congress's aim in establishing the Special Rule.

14 For the foregoing reasons, the decision of the bankruptcy
15 court is hereby reversed and the case is remanded for further
16 proceedings consistent with this ruling.