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Yellow Corp. and the Calculation of Withdrawal Liability



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Based on Internal Revenue Service Form 5500 filings, roughly half of the 1,193 multiemployer pension plans in existence as of Dec. 31, 2024, were fully funded.¹ This same study revealed a funding shortfall of approximately \$23 billion to fund current and future retiree benefits.² Participating employers are ultimately responsible for any shortfalls. If market volatility continues in 2025, asset losses could create greater funding shortfalls.

Thus, it remains critical that an employer withdrawing from a multiemployer plan pay their fair share of shortfall through an appropriate withdrawal liability calculation. When a participating employer files a bankruptcy petition and ceases to participate in a multiemployer plan, the issues increase in complexity and consideration. The opinions on withdrawal liability issued in *Yellow Corp.* provide helpful guidance for bankruptcy practitioners in helping avoid the “death spiral”³ of multiemployer plans.

The Basics

A “multiemployer plan” is a collectively bargained pension plan established by an agreement among two or more employers (typically in the same or related industries, such as manufacturing, trucking and transportation, or mining) and a labor union.⁴ “Through collective bargaining, employers agree to fund these plans with contributions to a pension trust fund based on employee hours worked.”⁵

The Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), requires an employer to make contributions⁶ to its

multiemployer plan that are sufficient to ensure that the plan does not have any accumulated funding deficiency.⁷ ERISA protects the infrastructure of multiemployer plans by requiring an employer that withdraws from a multiemployer plan to be liable for such employer’s share of unfunded vested benefits.⁸ Unfunded vested benefits, or the “shortfall,” is “the difference between the present value of the pension fund’s assets and the present value of its future obligations to employees covered by the pension plan.”⁹ The withdrawing employer pays an exit price of its *pro rata* share of the multiemployer plan’s shortfall.

To determine an employer’s share of a multiemployer plan’s unfunded vested benefits, the multiemployer plan determines its unfunded vested benefits (equal to the plan’s nonforfeitable benefits minus its assets) and determines the employer’s allocable share of the plan’s unfunded vested benefits.¹⁰ ERISA also provides for adjustments to the amount of withdrawal liability, one of which is a 20-year statutory cap.¹¹ There is no shortfall when the value of the present assets exceeds the multiemployer plan’s future obligations. However, where a shortfall exists, there has been disagreement on how to calculate an employer’s withdrawal liability. Over the past year, issues surrounding the calculation of withdrawal liability have taken center stage in the bankruptcy case of *Yellow Corp.*

Yellow Corp. and the Claims-Allowance Process

On Aug. 6, 2023, *Yellow Corp.*, one of North America’s largest less-than-truckload trucking and logistics companies, and its affiliates (collectively, “*Yellow*”) filed for chapter 11 protection in the U.S. Bankruptcy Court for the District of Delaware.¹² Before bankruptcy, *Yellow* had participated in several multiemployer plans, which asserted withdrawal liability claims totaling \$7.8 billion against *Yellow*’s

1 See Tim Connor, Timothy Herman, Rex Barker & Nina Lantz, “Multiemployer Pension Funding Study: Year-End 2024,” Milliman Inc. (Feb. 20, 2025), milliman.com/en/insight/multiemployer-pension-funding-study-year-end-2024 (unless otherwise specified, all links in this article were last visited on March 26, 2025).

2 See *id.*

3 See *In re Yellow Corp.*, No. 23-11069 (CTG), 2024 WL 1313308, at *3 (Bankr. D. Del. March 27, 2024) (“Soon after ERISA was enacted, Congress became concerned about the ‘death spiral’ that could occur when an employer withdrew from a multiemployer plan.”).

4 See “Introduction to Multiemployer Plans,” Pension Benefit Guaranty Corp., pbgc.gov/prac/multiemployer/introduction-to-multiemployer-plans; see also 29 U.S.C. § 1002(37)(A).

5 See William J. Wiatrowski, “An Analysis of Multiemployer Pension Plans,” U.S. Bureau of Labor Statistics (October 2014), bls.gov/opub/btn/volume-3/an-analysis-of-multiemployer-pension-plans.htm.

6 Employer contributions are typically set by a collective bargaining agreement that specifies such employer’s contribution formula. See “Introduction to Multiemployer Plans,” *supra* n.4.

7 See 29 U.S.C. § 1084.

8 See 29 U.S.C. §§ 1381, 1391.

9 *Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund v. CPC Logistics Inc.*, 698 F.3d 346, 347-48 (7th Cir. 2012).

10 *In re Yellow Corp.*, No. 23-11069 (CTG), 2024 WL 4925124, at *3 (Bankr. D. Del. Nov. 5, 2024) (citing 29 U.S.C. §§ 1393(c), 1391, 1399).

11 *Id.* at *15.

12 *Id.* at *5.

bankruptcy estates.¹³ Yellow disputed the appropriate amount of withdrawal liability and filed objections to some of those proofs of claim (totaling approximately \$6.3 billion), commencing a litany of multiemployer plan disputes.¹⁴

In reaction to the claim objections, the multiemployer plans filed motions to compel arbitration of the withdrawal liability disputes.¹⁵ Yellow objected, arguing that the determination of the disputes should be made by the bankruptcy court.¹⁶

The MPPAA requires that “[a]ny dispute between an employer and the plan sponsor of a multiemployer plan concerning a determination made under sections 1381 through 1399 of [ERISA] shall be resolved through arbitration.”¹⁷ On the other hand, § 502(b) of the Bankruptcy Code directs that when an objection is filed to a proof of claim, the bankruptcy court “shall determine the amount of such claim.”¹⁸ The bankruptcy court first had to address whether the claims under the MPPAA must be arbitrated (as the MPPAA requires), or whether they should be resolved through the bankruptcy court’s claims-allowance process.

The bankruptcy court denied the motions to compel arbitration, viewing them more properly as motions for relief from stay and finding no authority under either the MPPAA or the Federal Arbitration Act for a plaintiff to obtain a court order directing a defendant to initiate an arbitration.¹⁹ Noting that no Third Circuit precedent addressed arbitration of claims-allowance disputes and that the MPPAA creates a presumption in favor of granting stay relief to permit arbitration, the bankruptcy court found that such presumption could be overcome.²⁰

The bankruptcy court found that this presumption was overcome in Yellow’s case due to several factors, including the participation of other parties-in-interest (particularly MFN Partners²¹) in the claims-allowance process, the centrality of the dispute to the bankruptcy case, the bankruptcy court’s existing schedule for resolving the claims, and the uncertainties about how long arbitration might take.²² In reconciling the competing statutory mandates, the court recognized that “[t]here is no getting around the fact [that] § 502(b) ... and the MPPAA cannot simultaneously be given their full effect.”²³ Nevertheless, the bankruptcy court endeavored to respect both statutory schemes while crafting a practical solution that would advance the bankruptcy case efficiently.

PBGC Regulations

A significant wrinkle complicated this already complex situation. The American Rescue Plan Act

of 2021 (ARPA) had authorized the Pension Benefit Guaranty Corp. (PBGC) to provide “special financial assistance” to troubled multiemployer plans.²⁴ Eleven of the multiemployer plans involved in Yellow’s bankruptcy had collectively received more than \$40 billion in this assistance.²⁵

The issue before the court was whether these federal assistance funds should count as “plan assets” when calculating Yellow’s withdrawal liability. Yellow contended that they should, which would substantially reduce or even eliminate its obligations. The multiemployer plans argued that they should not, citing PBGC regulations.

More specifically, the “No-Receivables Regulation” prohibits multiemployer plans from counting awarded-but-not-yet-received federal assistance funds as assets.²⁶ Central States, the multiemployer plan with the largest claim against Yellow, was awarded \$35.8 billion in assistance funds in December 2022 but did not receive the funds until January 2023.²⁷ Since Central States calculated withdrawal liability based on the shortfall as of Dec. 31, 2022, the “No-Receivables Regulation” thus became extremely important.²⁸ The “Phase-In Regulation” directs multiemployer plans to treat the special financial assistance “as if they were received by the plans over time, even after they are in fact paid to the plan in a lump sum.”²⁹

Yellow challenged these two primary regulations as exceeding the PBGC’s statutory authority. Hon. **Craig Goldblatt** rejected Yellow’s arguments, finding that the PBGC regulations fell within the agency’s express statutory authority.³⁰ Furthermore, ARPA specified that special financial assistance could only be used “to make benefit payments and pay plan expenses” — not to reduce employer withdrawal liability.³¹ Using the special financial assistance to reduce Yellow’s liability would effectively use them for an unintended purpose.³²

While the multiemployer plans collectively prevailed on the main regulatory issues, Yellow won on a separate withdrawal liability calculation question. Yellow successfully argued that its withdrawal liability should be capped at 20 years of annual payments, as provided in ERISA, even if the multiemployer plans had declared a default.³³

An unresolved issue was related to the calculation of withdrawal liability owed to multiemployer plans that did not receive PBGC funds (the “five pension plans”).³⁴ Judge Goldblatt subsequently addressed the five pension plans,

13 *In re Yellow Corp.*, No. 23-11069 (CTG), 2024 WL 1313308, at *1 (Bankr. D. Del. March 27, 2024).

14 *See id.* at *4.

15 *Id.*

16 *Id.*

17 29 U.S.C. § 1401(a)(1).

18 11 U.S.C. § 502(b).

19 *See Yellow*, 2024 WL 1313308, at *5.

20 *See id.* at *9, *11, *14-15.

21 MFN Partners, the largest holder of publicly traded stock of Yellow, objected to the motion to compel arbitration, arguing that the value of its equity holdings was dependent on the outcome of the claims-allowance process. *Id.* at *4 (“Equity in Yellow Corporation would be worthless if the pension funds’ claims were allowed but might have substantial value if \$7.8 billion in unsecured claims were disallowed.”).

22 *See id.* at *13-15.

23 *Id.* at *11.

24 *See* 29 U.S.C. § 1432.

25 *In re Yellow Corp.*, No. 23-11069 (CTG), 2024 WL 4925124, at *1 (Bankr. D. Del. Nov. 5, 2024).

26 *See id.* at *1.

27 *Id.* at *10.

28 *Id.*

29 *See id.* at *1.

30 *See id.* at *7.

31 *See id.* at *4.

32 *See id.* at *8-11.

33 *See id.* at *14-16.

34 The five pension plans that did not receive federal funds under ARPA were the Central Pennsylvania Teamsters Pension Fund Defined Benefit Plan, International Brotherhood of Teamsters Union No. Local 710 Pension Fund, Teamsters Joint Council No. 83 of Virginia Pension Fund, New England Teamsters Pension Fund, and Teamsters Pension Trust Fund of Philadelphia & Vicinity (collectively, the “five pension plans”). *In re Yellow Corp.*, No. 23-11069 (CTG), 2025 WL 419249, at *1n.2 (Bankr. D. Del. Feb. 5, 2025).

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which had filed proofs of claim for withdrawal liability in the aggregate amount of \$540 million.

Withdrawal Liability Calculation Questions Continue

Judge Goldblatt's Feb. 5, 2025, opinion addressed (among other things³⁵) the calculation of Yellow's withdrawal liability owed to the five pension plans by interpreting ERISA's directive on an actuary's use of assumptions to calculate withdrawal liability. The five pension plans argued in favor of utilizing a risk-free interest rate calculation, resulting in a lower return. Yellow argued that a higher interest rate in line with the multiemployer plan's past performance was more appropriate. Judge Goldblatt reasoned that because the statutory language addressing minimum funding is similar to the language addressing withdrawal liability, both should utilize a similar calculation and that the assumptions should be reasonable in light of the multiemployer plan's historical performance.

Relying on the Sixth Circuit's decision in *Sofco Erectors v. Trustees of the Ohio Operating Engineers Pension Fund*,³⁶ Judge Goldblatt noted that for purposes of calculating a multiemployer plan's *minimum funding*, ERISA mandates that a multiemployer plan's actuary should utilize assumptions and methods that are "reasonable (taking into account the experience of the plan and reasonable expectations)" and "offer the actuary's best estimate of anticipated experience under the plan."³⁷ In this way, the higher the interest rate of the assumption means the lower the amount of required funding needed.³⁸

Next, Judge Goldblatt identified similarities with the calculation of unfunded vested benefits, which "requires one to determine the present value of the benefits the plan owes in the future."³⁹ Similar to minimum funding, ERISA's directive for *withdrawal liability* provides that such withdrawal liability "shall be determined by each plan on the basis of ... actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan."⁴⁰ This is the inverse of minimum funding: For withdrawal liability, the lower

the interest rate assumption, the greater the amount of withdrawal liability owed.

Because the interest rate assumptions that the five pension plans utilized were risk-free rates, they resulted in a lower projected return. However, ERISA requires an actuary's assumptions to be the "best estimate of anticipated experience under the plan."⁴¹ Although the court did not adopt a specific rate, the court found that utilizing a discount rate was inconsistent with ERISA because it did not track the multiemployer plan's historical performance, ultimately disagreeing with the \$540 million in liability sought by the five pension plans.

Looking Forward

Multiemployer plan withdrawal-liability disputes present fascinating issues at the intersection of bankruptcy and ERISA law. Yellow's closure triggered a complex legal battle over pension withdrawal obligations that would test the boundaries of federal pension law, including relatively recent COVID-19 pandemic-era legislation. Although Yellow presented these disputes on a grand scale, the issues surrounding withdrawal liability are common, and for debtors with limited assets with which to address such liability, the resolution of the claims may prove paramount.

Practitioners should recall the decision from *Sun Capital Partners III LP v. New England Teamsters & Trucking Industry Pension Fund*,⁴² in which the First Circuit held that two affiliated private-equity funds were not liable for the portfolio company's withdrawal from a multiemployer plan. However, because the First Circuit did not disagree with the "trade or business" factors, private-equity funds could still be held liable for a portfolio company's withdrawal under certain facts. Thus, *Yellow* could be helpful to private equity funds that might be liable for a portfolio company's withdrawal because the calculation utilized for withdrawal liability was more favorable to the employer.

Given the currently precarious nature of multiemployer plans, and based on gloomy predictions for their future funding, it is important that withdrawal liability calculations are assessed in accordance with ERISA to ensure that shortfalls are addressed to protect the bargained-for benefits of retired workers and those workers working toward retirement, without foreclosing an employer's restructuring efforts. Judge Goldblatt's thorough and carefully balanced opinions issued throughout the *Yellow* case are an invaluable resource for any party seeking an efficient and fair end to withdrawal liability disputes. **abi**

³⁵ Before the court were also the questions of (1) whether summary judgment in favor of the Teamsters Joint Council No. 83 of Virginia Pension was appropriate with respect to the calculation of contribution base units (defined in 29 U.S.C. § 1301(a)(11)); and (2) whether summary judgment in favor of Yellow or the New England Teamsters Pension Fund was appropriate regarding the withdrawal-liability calculation.

³⁶ 15 F.4th 407 (6th Cir. 2021).

³⁷ See *Yellow*, 2025 WL 419249, at *4 (quoting 29 U.S.C. § 1084(c)(3)).

³⁸ See *id.* at *4.

³⁹ *Id.*

⁴⁰ *Id.* (quoting 29 U.S.C. § 1393(a)(1)).

⁴¹ *Id.*

⁴² 724 F.3d 129 (1st Cir. 2013).