

Contractually Amendable Retiree Health and Welfare Benefits

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On July 13, 2010, in a controversial decision, the U.S. Court of Appeals for the Third Circuit ruled that a debtor must comply with the stringent procedural and substantive requirements of 11 U.S.C. § 1114 ("Section 1114") to terminate retiree health and welfare benefits that the debtor contractually retained the right to modify at will (referred to in this article as "amendable benefits"). See *In re Visteon Corp.*, No 10-1944, 2010 U.S. App. LEXIS 14307 (3d Cir. July 13, 2010). In a lengthy decision, the court overruled the district and bankruptcy courts, broke with the majority of courts across the country that have addressed this issue (including, most recently, in the Delphi case), and reached the opposite result. See, e.g., *In re Delphi Corp.*, No. 05-44481, 2009 WL 637315 (Bankr. S.D.N.Y. March 10, 2009).

The Third Circuit, however, in siding with the retirees, concluded that a plain reading of Section 1114 compels this result and reasoned that Congress likely had good cause to expand the rights of a sympathetic constituency at a time when its benefits are most vulnerable.

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