

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
NORTHWESTERN CORPORATION,)	Case No. 03-12872 (JLP)
)	
Reorganized Debtor.)	
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**MEMORANDUM OPINION WITH RESPECT TO ARBITRATION OF RICHARD
HYLLAND'S CLAIMS AGAINST NORTHWESTERN CORPORATION**

The Reorganized Debtor, NorthWestern Corporation ("NOR"), filed a motion to terminate the Supplemental Income Security Plan ("SISP") and certain other benefit plans of Richard R. Hylland ("Hylland") pursuant to sections 105 and 363 of the Code [Docket No. 2598] (the "Motion to Terminate").¹ NOR also filed its objection to Hylland's proof of claim pursuant to section 502(b)(1) [Docket No. 2615]. Hylland filed objections to the Motion to Terminate and moved for an order confirming that the SISP is an post-confirmation obligation of NOR [Docket No. 2598]. On March 23, 2005, Hylland filed an amended objection and cross-motion for order confirming the SISP as an obligation of NOR [Docket No. 2937]. Hylland asserts that the Court has no jurisdiction over the motion to terminate Hylland's pension benefits.

On January 14, 2004, Hylland filed a proof of claim (claim no. 695), asserting a secured claim and an unsecured priority claim for damages with regard to Hylland's participation in the SISP and NOR's Family Protection Plan. Hylland's claim estimates the SISP benefits to be in excess of \$4 million.

¹ Unless otherwise indicated, all references to statutory sections are to the Bankruptcy Code (the "Code"), 11 U.S.C. § 101, *et seq.*

In NOR's Second Amended Disclosure Statement [Docket No. 1926], NOR stated that the rejection of non-qualified plans may lead to general unsecured claims and would therefore be included in Class 9. In footnote 52 to the Disclosure Statement, NOR stated that Hylland filed a claim in the amount of \$30.4 million in connection with his employment and benefits under Debtor's non-qualified benefit plans, and that Debtor intended to object to Hylland's claims.

However, it was not until January 13, 2005, after the chapter 11 Plan had been confirmed on October 19, 2004, the Plan became effective November 1, 2004, and notice of substantial consummation of the Plan had been filed December 29, 2004, that NOR filed the Motion to Terminate. The Motion to Terminate seeks to terminate the SISP and objects to all SISP claims "because a majority of the participants are not providing any services for" NOR, and thus NOR seeks to reduce future costs by approximately \$5,420,735.00. NOR places the present value of Hylland's SISP benefits at \$682,690.00, for which he would receive payment in stock of the Reorganized Debtor.

Hylland's objection urges that this Court lacks jurisdiction over the current pension dispute because the Plan has been confirmed and substantially consummated. NOR nevertheless contends that jurisdiction in this Court is proper because Section 8.6 of the Plan provides, in pertinent part:

Retiree Benefits. Payment of any Retiree Benefits (as such benefits may have been modified during the Chapter 11 case) shall be continued solely to the extent, and for the duration of the period, the Debtor is contractually or legally obligated to provide such benefits, subject to any and all rights of the Debtor under applicable law (including, without limitation, the Debtor's right to amend or terminate such benefits prior to or after the Effective Date).

Section 1.161 of the Plan defines "Retiree Benefits" as:

[P]ayments to any Person for the purpose of providing or reimbursing payments for retired employees of the Debtor and of any other entities as to which the Debtor is obligated to provide retiree benefits and the eligible spouses and eligible dependents of such retired employees, for medical, surgical, or hospital care benefits, or in the event of death of a retiree under any plan, fund or program (through the purchase of insurance or otherwise) maintained or established by the Debtor prior to the Petition Date, as such plan, fund or program was then in effect or as heretofore or hereafter amended.

According to NOR, SISP provides supplemental retirement and/or death benefits to eligible senior management employees and outside directors of the Debtor who did not waive participation in the SISP. Accordingly, NOR contends that under Section 8.6 of the Plan, its Motion to Terminate is timely since it falls within the phrase “prior to or after the Effective Date.”

With respect to the SISP claim, Hylland filed a proof of claim (claim no. 813) seeking \$30.6 million. On April 30, 2003, Hylland filed a demand for arbitration pursuant to his employment agreement, which included tort and contractual damages. While the Bankruptcy Court denied Hylland’s motion for relief from stay to allow the arbitration to proceed, that decision was overruled by the U.S. District Court on January 7, 2005 (AK 2558-2559), which ordered the arbitration proceedings to go forward.

Hylland and NOR agree that the arbitration proceeding includes the dispute surrounding Hylland’s termination from NOR, including whether it for was cause or without cause. Hylland further contends that he is entitled to his vested benefits, which includes the SISP plan.

In re Resorts International, Inc., 372 F.3d 154 (3d Cir. 2004), cited by both parties, held that post-confirmation jurisdiction in the bankruptcy court, where the estate has vested under section 1141, exists when there is a “close nexus to the bankruptcy plan or proceedings sufficient

to uphold bankruptcy court jurisdiction over the matter.” *Id.* at 166-167. Here, the Plan does not expressly provide for termination of retiree benefits after the Effective Date, but that does not really answer the jurisdictional question. Hylland’s SISP benefits must be determined in light of his proof of claim. Hylland argues the SISP cannot now be modified because NOR did nothing before substantial consummation of the Plan. Hylland, however, was an active participant in the reorganization proceedings, not only through his filing of a proof of claim, but also through filing objections to confirmation of the Plan. (See Confirmation Order, filed October 20, 2004, pp. 19-24). The Confirmation Order notes Hylland’s assertions, which provides “notwithstanding any provision of this Plan to the contrary, this Plan . . . shall not affect any setoff rights, if any, of Richard Hylland.” The Plan sets Hylland’s claim as being a Class 9 claim. Specifically, the Confirmation Order provides:

Moreover, the Plan provides in Section 4.9 to the extent that Mr. Hylland holds Class 9 Claims that are not D&O Trust Claims and are ultimately determined to be Allowed General Unsecured Claims, Mr. Hylland will receive the same treatment as any other holder of an Allowed Class 9 Claim.

(Confirmation Order, p. 23).

The question before the Court is really what forum should liquidate and finalize Hylland’s proof of claim and SISP benefits. Indeed, NOR states the present value of the SISP is \$661,000, while Hylland claims that the present value is \$971,828, with attorney’s fees and interest, Hylland claims that the present value is in excess of \$4.6 million.

While NOR argues Hylland’s arbitration demand does not seek to arbitrate his SISP claim, NOR has put that matter directly into issue before some forum, as proof of claim no. 695 put this claim directly into a Class 9 claim position, which must be liquidated somewhere. I

agree with Hylland's Counsel that to the extent NOR seeks to terminate the SISP plan, assuming it can, the issue should be resolved in the ongoing arbitration proceeding.

28 U.S.C. section 1334(c)(1) provides:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

The U.S. District Court in the Hylland/NOR Appeal noted there is a "strong policy favoring arbitration," citing *In re GWI, Inc.*, 269 B.R. 114, 118 (Bankr. D. Del. 2001), and the District Court was "persuaded that arbitration will further the goals of the Bankruptcy Code by providing the parties with a quick and efficient resolution of the Appellant's claim," particularly where the arbitration proceeding is ongoing.

Since there is a parallel forum pending regarding Hylland's claims, I deem it in the interest of justice to abstain from resolution of NOR's Motion to Terminate in favor of the pending arbitration proceeding.

A separate order shall enter.

Dated: May 5, 2005


Honorable John L. Peterson
United States Bankruptcy Judge