UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
YELLOW CORPORATION, *et al.*,[1]	)	Case No. 23-11069 (CTG)
Debtors.	)	(Jointly Administered)

FUNDS' RESPONSE IN OPPOSITION TO DEBTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://dm.epiq11.com/YellowCorporation. The location of the Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is: 11500 Outlook Street, Suite 400, Overland Park, Kansas 66211.

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The Central Pennsylvania Teamsters Pension Fund Defined Benefit Plan ("Central PA Teamsters"), the International Brotherhood of Teamsters Union No. Local 710 Pension Fund ("Teamsters Local 710"), the New England Teamsters Pension Fund ("NETTI"), and the Teamsters Joint Council No. 83 of Virginia Pension Fund ("Virginia Teamsters," and together with Central PA Teamsters, Teamsters Local 710, and NETTI, the "Funds"), by and through their undersigned counsel, hereby oppose the Debtors' Motion for Partial Summary Judgment on Non-SFA MEPPs' Withdrawal Liability Claims [Dkt. No. 4834] (the "Debtors' Motion" or "Motion").

INTRODUCTION

1. The Debtors seek summary judgment on three issues. On one, summary judgment in their favor is appropriate, as it follows from a previous order of this Court: claims should be calculated in accordance with ERISA's 20-year cap. On the second, summary judgment is inappropriate because it would be inconsistent with that same order: Yellow's agreement with NETTI regarding its withdrawal liability should be enforced. On the third, summary judgment should be denied because the Debtors are legally in error: they contend that ERISA prohibits plan actuaries from considering any element of plan experience other than expected investment returns when selecting a discount rate to calculate withdrawal liability. But this restriction is found nowhere in the text of ERISA. In fact, the SFA MEPPs in these cases used a rate not tied to investment returns, without challenge from the Debtors.

2. What the Debtors choose to omit from their presentation of facts and law is revealing. With respect to the discount rate, the Debtors suggest that courts unanimously agree that a rate exclusively reflecting expected investment returns is the *only* assumption plan actuaries may legally select. Not so. There is a split in relevant authority, and the cases supporting the Debtors' position—nearly all issued within the last three years—proceed from a faulty premise that misunderstands decades of consistent precedent to the contrary. The Debtors fail to cite *both* the

only in-circuit case to address this issue (*Manhattan Ford*) and the only binding case on this Court (*Concrete Pipe*)—perhaps because each finds that actuaries may consider elements of plan experience beyond only investment returns. Nor do the Debtors acknowledge that it is their burden to rebut the Funds' calculations. As the Debtors' only argument regarding the discount rate is legal, not factual, and as their legal position is incorrect, the Debtors do not carry this burden.

3. Nor do the Debtors recognize that an existing, active regulation directly refutes the idea that a rate reflecting investment returns must always be used in calculating withdrawal liability. The PBGC requires plans in receipt of SFA to use a rate reflecting annuity returns in their withdrawal liability calculations, regardless of whether the plans are in fact invested in annuities. No court tasked with evaluating the appropriate discount rate has yet addressed the implications of this regulation, but it bears heavily on the analysis: it strains credulity to argue that ERISA categorically (though extra-textually) requires all plan actuaries to use a rate tied to investment returns when the PBGC expressly directs certain plan actuaries otherwise.

4. The Debtors also fail to acknowledge the significant history between Yellow and NETTI that gave rise to the agreement regarding withdrawal liability the Debtors would disclaim. NETTI's calculation of Yellow's withdrawal liability in the manner set out in its proof of claim is precisely the bargain Yellow struck when it sought contribution relief from NETTI over a decade ago, was not assessed withdrawal liability, and re-entered the Fund at a substantially reduced rate. This Court previously held that the Debtors are bound to Yellow's withdrawal liability agreements with its MEPPs arising out of these same circumstances. And while the Debtors are keen to take advantage of the Court's previous ruling when it favors them (as with the 20-year cap), they would ignore it when it does not.

5. There is more to the story than the Debtors present. Context matters—it is appropriate for plan actuaries to consider all elements of plan experience in selecting a discount rate; it is necessary to consider the full history of, and consideration exchanged between, Yellow and NETTI when evaluating the agreement between these parties with respect to withdrawal liability. The Funds respectfully submit that the Court should deny the Debtors' Motion other than with respect to the application of the 20-year cap to the Virginia Teamsters' claim.

ARGUMENT

I. ERISA DOES NOT RESTRICT ACTUARIES TO SELECTING A DISCOUNT RATE THAT EXCLUSIVELY REFLECTS INVESTMENT RETURNS

6. When calculating unfunded vested benefits for purposes of withdrawal liability, a plan actuary must utilize "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[.]" 29 U.S.C. § 1393(a)(1).

7. The Debtors contend that this language requires the Funds' actuaries to select a discount rate that reflects, exclusively, the Funds' expected return on their actual investments.[2] Incorporating any other element of "anticipated plan experience" in the actuarial decision making process, according to the Debtors, is legally prohibited.[3] But this position is contradicted by decades of consistent case law (and the majority of current actuarial practice), and finds support in only a recent spate of cases that mis-read ERISA and disregard decades of consistent precedent.

[2] *See* Debtors' Motion ¶ 1 ("[T]he plan must use an interest rate that reflects the plan's projected investment returns.") (internal citation omitted).

[3] *See* Objection, Dkt. No. 2595, ¶ 27 n.22 (the Funds' selected rates "do[] not comply" with ERISA "because such rates were not based on the experience and future expectations of the relevant Pension Plan.").

8. In 1993, the Supreme Court confirmed that the assumptions selected for withdrawal liability and minimum funding purposes need not be identical; the relevant question is whether the methods used fall outside the range of reasonable actuarial practice. *See Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 634-35 (1993). Beyond this, there is no binding authority for this Court on this issue. While there is a circuit split, the only in-district authority supports reasonable actuarial discretion in considering factors beyond investment returns. The cases holding to the contrary read words into ERISA's "best estimate" requirement that are not present in the statute, and restrict actuaries to considering plan experience in the limited context of expected investment returns. And the PBGC's requirement that SFA MEPPs use a rate *other than* one mirroring investment returns to calculate withdrawal liability throws into sharp relief the false premise underlying the Debtors' legal position.

A. Well-Reasoned Authority Defers to Actuaries' Reasonable, Professional Judgment and Endorses Different Assumptions for Different Purposes

9. In *Concrete Pipe*, the Supreme Court held that the burden to disturb a plan's withdrawal liability calculation rests with the withdrawing employer. *See Concrete Pipe*, 508 U.S. at 621. This holding is grounded, in significant part, on the specialized judgment that qualified actuaries possess and the professional standards to which they are bound. Unlike plan trustees, who (the *Concrete Pipe* petitioners suggested) might wish to increase withdrawal liability, plan actuaries are not "vulnerable to suggestions of bias or its appearance," for they "are trained professionals subject to regulatory standards." *Id.* at 632. The Supreme Court emphasized that an employer's burden in disputing a withdrawal liability assessment is "to show that an apparently unbiased professional, whose obligations tend to moderate any claimed inclination to come down hard on withdrawing employers, has based a calculation on a combination of methods and assumptions that falls outside the range of reasonable actuarial practice." *Id.* at 635.

10. The Debtors disregard this binding precedent entirely; *Concrete Pipe* appears nowhere in their Motion. Instead, the Debtors contend that reasonable actuarial practice is irrelevant to the selection of a discount rate for calculating withdrawal liability. They argue that ERISA requires actuaries to select a rate exclusively reflecting investment returns—notwithstanding that a majority of practicing actuaries today use a different methodology.[4]

11. Also absent from the Debtors' Motion are the circuit court cases that follow *Concrete Pipe* in confirming that the independence and qualifications of actuaries—far from being irrelevant—are crucial in determining whether the assumptions selected were the actuary's "best estimate" of anticipated plan experience. The Second, Fifth, and Seventh Circuits have held that ERISA compels actuaries to act independently and to exercise professional judgment, rather than taking direction from the plan trustees or sponsors. *See Wachtell, Lipton, Rosen & Katz v. Comm'r of Internal Revenue*, 26 F.3d 291, 296 (2d Cir. 1994) (the "best estimate" requirement "is principally designed to insure that the chosen assumptions actually represent the actuary's own judgment rather than the dictates of plan administrators or sponsors") (citing *Vinson & Elkins v. Comm'r of Internal Revenue*, 7 F.3d 1235, 1238 (5th Cir. 1993)); *Chi. Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund v. CPC Logistics, Inc.*, 698 F.3d 346, 357 (7th Cir. 2012) ("[T]he 'best estimate' requirement . . . exists to maintain the actuary's independence."). The Seventh Circuit expressly held that the plan actuary there was *required* to use a blended rate, rather than the minimum funding rate, because the plan's actuary confirmed that the blended rate was its best estimate of plan experience with respect to withdrawal liability. *Chi. Truck Drivers*,

[4] The Debtors' expert confirms that a majority of practicing actuaries today do not use the minimum funding rate (which reflects expected investment returns) for purposes of calculating withdrawal liability. *See Declaration of Erin. E. Dexter in Support of the Funds' Motion for Partial Summary Judgment* [Dkt. 4869] (the "Dexter Decl."), Ex. K (Campbell Dep. Tr.) at 99:6-23 (agreeing that "a majority of multi-employer plans do not use the minimum funding rate for determining withdrawal liability").

698 F.3d at 356-57 (Posner, J.) (rejecting the idea that use of the minimum funding rate is a "safe harbor" where that rate is not the actuary's "best estimate").

12. Absent, again, from the Debtors' motion is the lone in-circuit case to address this precise question. Issued in 2018, it accords with the above precedent and holds, explicitly, that "ERISA imposes no *per se* ban on the use of different actuarial assumptions for purposes of [minimum] funding and withdrawal liability." *Manhattan Ford Lincoln, Inc. v. UAW Local 259 Pension Fund*, 331 F. Supp. 3d 365, 393 (D.N.J. 2018). The court arrives at this conclusion after an exhaustive analysis of the exact argument the Debtors advance here—that the similarity in statutory language among the minimum funding and withdrawal liability provisions of the U.S. Code requires identical assumptions to be used for both purposes. Disagreeing with that premise, the court finds highly relevant that the two sections describe measurements serving very different purposes: "the differing contexts of [minimum] funding and withdrawal [liability] support the idea that Congress did not mean to categorically rule out any divergence between them as to the actuarial assumptions used." *Id.* at 392. And, crucially, the court acknowledges that an employer's withdrawal may affect the anticipated experience of a plan, and that it is appropriate for an actuary to take that element of anticipated experience into account. *See id.* at 402 ("The 'best estimate of anticipated experience under the plan' . . . may reflect factors other than the Plan's commitment to some future investment portfolio.").

13. True, other courts have found differently.[5] A hyper-recent burst of cases suggest the minimum funding and withdrawal liability discount rates should be identical (or "similar," although without ever describing how "similar" they must be). But not only do these cases depart

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[5] The Supreme Court has thus far declined to weigh in on the circuit split. *See United Mine Workers of Am. 1974 Pension Plan v. Energy W. Mining Co.*, 143 S. Ct. 1024 (2023) (denying certiorari); *GCIU-Emp. Ret. Fund v. MNG Enterprises, Inc.*, 143 S. Ct. 2665 (2023) (denying certiorari).

from *Concrete Pipe*'s acknowledgment that actuarial assumptions selected for other purposes "may be 'supplemented by several actuarial assumptions unique to withdrawal liability'" (*Concrete Pipe*, 508 U.S. at 633), they all proceed from a faulty premise: that ERISA's instruction to actuaries to derive a "best estimate" of "anticipated experience under the plan" is limited, *entirely extra-textually*, to anticipated experience *with respect to investment returns* alone. *E.g.,*

- *National Ret. Fund v. Domestic Linen Control Grp.*, 2024 WL 3607316, at *8 (S.D.N.Y. July 31, 2024) ("the plan must use an interest rate that reflects the plan's projected investment returns");

- *GCIU-Employer Retirement Fund v. MNG Enterprises, Inc.*, 51 F. 4th 1092, 1100 (9th Cir. 2022) ("Because [the PBGC] rate overlooks the plan's expected returns, it does not satisfy the 'best estimate' standard.");

- *United Mine Workers of Am. 1974 Pension Plan v. Energy W. Mining Co.,* 39 F.4th 730 (D.C. Cir. 2022) ("the MPPAA's rule that the actuary use assumptions 'which, in combination, offer the actuary's best estimate of anticipated experience under the plan' requires the actuary to choose a discount rate assumption based on the plan's actual investments");

- *Sofco Erectors, Inc. v. Trs. of Ohio Operating Eng'rs Pension Fund*, 15 F.4th 407, 421 (6th Cir. 2021) (finding a blended method necessarily "dilutes the actuary's best estimate" because it does not exclusively reflect expected investment returns).[6]

14. The case with which the Debtors open their motion lays plain the contradiction inherent in these holdings. *Domestic Linen* confirms, as it must, that "the interest rates used for calculating withdrawal liability and minimum funding are not legally required to be identical," and acknowledges that every case—every single case—since *Concrete Pipe* to confront this issue has so held. *Domestic Linen*, 2024 WL 3607316, at *7. But in the same breath, it acknowledges that the direct result of its holding is that "it [is] difficult to see how any other rate could be used." *Id.* at *8. These gymnastics are unnecessary. ERISA, by its text, imposes no such restriction. *See* 29

6 Although certain of these opinions were issued after July 2022, none considered the fact that the PBGC had by then promulgated a final regulation requiring plans that receive SFA to use an annuities rate when calculating withdrawal liability, discussed *infra*.

U.S.C. § 1393(a)(1) (the actuarial assumptions and methods selected shall reflect "the actuary's best estimate of anticipated experience under the plan," full stop).

15. When an actuary considers the anticipated experience of a plan undergoing an employer withdrawal, it stands to reason that a significant element of the plan's experience may be *that very withdrawal*, and the follow-on effects felt by those remaining in the plan. *See Manhattan Ford*, 331 F. Supp. 3d at 403. An actuary could choose to reflect this anticipated plan experience by using a rate that models the plan's settlement of its vested benefit obligations through annuity purchases (*e.g.*, the PBGC Rate or current liability rate). An actuary could also determine, in her professional judgment, to blend a settlement rate with the plan's minimum funding rate. So, too, could she select the minimum funding assumption.

16. How revealing that in this very case, actuaries for the various non-SFA MEPPs selected each of these different assumptions. Some selected settlement rates, some the minimum funding rate, and others the blended method.[7] There is no better demonstration of the "range of reasonable actuarial practice" that the Supreme Court recognized. *Concrete Pipe*, 508 U.S. at 635. But ERISA does require actuaries, in all cases, to affirm that their selection reflects their best estimate. The Funds' actuaries, whose qualifications are unquestioned, all did that here.

17. ERISA instructs actuaries to select their best estimate of plan experience using their independent professional judgment, and well-grounded authority contemplates and permits a range of assumptions within reasonable actuarial practice. ERISA does not require an actuary to select a discount rate exclusively premised on investment returns.

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[7] *See, e.g.,* Funds' Motion at ¶ 21, 22 (stating that NETTI, Central PA Teamsters, and Virginia Teamsters used a blended rate and that Teamsters Local 710 used the current liability rate); *see also* Dexter Decl., Ex. V (Amended Hilco Report) at 13, 14 (noting that Philadelphia Teamsters used a blended rate, and Local 705 used the minimum funding rate).

B. SFA MEPPs Must Use an Annuity Rate for Withdrawal Liability Calculations

18. Unaddressed in any of the case law on this issue is that fact that the PBGC now *requires* plans that have received SFA to use a rate reflecting annuity returns—and not the plan's minimum funding rate—to calculate withdrawal liability. *See* 29 C.F.R. § 4262.16(g). The regulation is recent and post-dates much of the authority on this issue. But it directly conflicts with the legal position the Debtors take here. If ERISA always requires plans to use a rate reflecting expected investment returns when calculating withdrawal liability, why does the PBGC require plans in receipt of SFA to use a different rate? And if the Debtors truly believe that an investment return rate is the only legally permissible rate to use, why did they not challenge this element of the SFA regulation among the other, numerous challenges raised previously?

19. The SFA regulation, in this regard, is simple: when a MEPP receives SFA, it must use the PBGC Rate (which approximates annuity returns) to calculate withdrawal liability for the earlier of ten years or the projected life of the SFA assets. *See id*. The plan must do this regardless of whether it is invested in annuities. And the SFA MEPPs in this case did just this,[8] without challenge from the Debtors.

20. There is no logical reason that a pension plan not invested in annuities would ordinarily be *prohibited* from using an annuity-like rate to calculate withdrawal liability, but *compelled* to do so once in receipt of SFA.[9] The far more logical conclusion—endorsed by the PBGC—is that it

[8] *See, e.g.*, *Written Declaration of Randee Sekol on Behalf of Western PA Teamsters & Employers Pension Fund* [Dkt. No. 3852-8] ¶¶ 27-28; *Written Declaration of Vincent Regalbuto on Behalf of Road Carriers Local 707 Pension Fund* [Dkt. No. 3852-9] ¶¶ 27-28; *Written Declaration of Paul Bullock on Behalf of International Association of Motor City Machinists Pension Fund* [Dkt. No. 3852-10] ¶¶ 26-27.

[9] Some cases rejecting the use of an annuities rate suggest that this rate is only appropriate in the limited context of a mass withdrawal (where, indeed, the PBGC requires its use, *see* 29 C.F.R. § 4281.13), as in that circumstance *no* contributing employers remain in the plan, and the plan *must* purchase annuities with remaining plan assets. *See Sofco*, 15 F. 4th at 421 (finding the blended rate violates ERISA because "[a]n actuary using the Segal Blend is factoring in an interest rate used for plans that essentially go out of business, even though these plans are neither going out of business nor required to purchase annuities to cover the departing employer's share of vested

is reasonable for an actuary to acknowledge how an employer's withdrawal may affect a plan's anticipated experience, which may result in a departure from the minimum funding rate. *See* Special Financial Assistance by PBGC, 86 Fed. Reg. 36598, 36611 (July 12, 2021) (recognizing "withdrawal liability is the final settlement of the withdrawing employer's obligation to pay for unfunded vested benefits"); Brief for the PBGC as *Amicus Curiae*, *N.Y. Times Co. v. Newspaper & Mail Delivers'- Publishers' Pension Fund*, Nos. 18-1140, 18-1408, 2018 WL 6003761, at *28 (2d Cir. Nov. 7, 2018) (supporting reversal of decision invalidating the Segal Blend because the holding that "the interest rate assumption must offer the actuary's best estimate of the long-term average rate of return on plan assets . . . contradicted [the judge's] correct holding that funding and withdrawal liability interest assumptions need not be identical"); PBGC Opinion Letter 86-24, 1986 WL 38802, at *1 (Oct. 31, 1986) (ERISA does not require "that the actuarial assumptions used to determine withdrawal liability be the same as those used for purposes of [minimum funding]").[10]

21. The PBGC has not yet published a final rule on actuarial assumptions for calculating withdrawal liability generally, as the Debtors correctly indicate.[11] But it is telling that the PBGC

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benefits"); *Mich. Paving and Materials Co. v. Operating Eng'rs Loc. 342 Pension Fund*, 2024 WL 4525295, at *10 (E.D. Mich. July 31, 2024) ("use of the PBGC rate is not permissible in a 'partial withdrawal' context where the Plan still has ongoing contributions and investment potential, making such a conservative rate excessive"). But the SFA regulation squarely contradicts this idea. Plans with employers continuing to contribute and now in good financial health are required to use an annuity-like rate, regardless of whether they are invested in annuities.

[10] The PBGC is also explicit that plans may continue to use the PBGC Rate beyond the period required by the SFA regulation. *See* Special Financial Assistance by PBGC—Withdrawal Liability Condition Exception, 88 Fed. Reg. 4900, 4901 (Jan. 26, 2023) ("While a plan is not required to use mass withdrawal interest assumptions beyond the specified period, the regulation does not preclude the use of settlement rates thereafter to determine withdrawal liability, as otherwise permitted by ERISA."); Special Financial Assistance by PBGC, 87 Fed. Reg. 40968, 40996 (July 8, 2022) ("Eliminating a plan's ability to prolong application of the condition requiring use of mass withdrawal interest assumptions beyond the specified period does not preclude the use of settlement rates thereafter to determine withdrawal liability, as otherwise permitted by ERISA.").

[11] The PBGC again acknowledged its intention to finalize this regulation in promulgating its interim SFA regulation. *See* Special Financial Assistance by PBGC, 86 Fed. Reg. 36598, 36611 n. 18 (July 12, 2021) ("PBGC intends to propose a separate rule of general applicability under section 4213(a) of ERISA to prescribe actuarial assumptions which may be used by a plan actuary in determining an employer's withdrawal liability.").

has required many MEPPs—including many in these cases—to use an annuity-approximating settlement metric to calculate withdrawal liability, regardless of whether the plan is invested in annuities. This certainly suggests that an interpretation of ERISA forbidding consideration of any plan experience beyond investment returns is in error.

II. CONSISTENT WITH THE COURT'S SEPTEMBER OPINION, THE 20-YEAR CAP APPLIES

22. Virginia Teamsters acknowledges that its claim for withdrawal liability will be calculated in the amount of the Debtors' Annual Payments over a 20-year period, pursuant to ERISA. *See* 29 U.S.C. § 1399(c)(1)(B). The Court has spoken on this issue in its ruling with respect to the SFA MEPPs (the "September Opinion"). *See* Amended Memorandum Opinion at 37-38 [Dkt. No. 4769].[12]

III. CONSISTENT WITH THE COURT'S SEPTEMBER OPINION, YELLOW MUST BE HELD TO ITS AGREEMENT WITH NETTI

23. While invoking the Court's September Opinion with respect to the 20-year cap, the Debtors seek to sidestep it in arguing that NETTI must calculate the Debtors' Annual Payments based on CBUs from 2013 to 2023. The Debtors claim that NETTI was "required to calculate Debtors' annual payment pursuant to Section 1399(c)(1)(C)(i) of ERISA." Debtors' Motion, ¶¶ 75-78. But the Debtors fail to acknowledge that Yellow *agreed* to this condition when, after enjoying a period in which it made no contributions yet was not assessed withdrawal liability, Yellow re-entered the Fund (contributing significantly less) subject to the terms of the NETTI Plan. In the September Opinion, this Court held that two SFA MEPPs with alternative withdrawal liability calculations for Yellow had an enforceable agreement with the Debtors. *See*

[12] The Court filed its original ruling on the 20-year cap on September 13, 2024. *See Memorandum Opinion* [Dkt. 4326]. The Court filed an amended version of its ruling on November 5, 2024, but did not disturb its holding on the 20-year cap. *See Amended Memorandum Opinion* [Dkt. No. 4769].

Memorandum Opinion at 41 [Dkt. No. 4326]. NETTI's agreement with Yellow is similarly enforceable.

24. As has been well-documented in these cases, in 2009, Yellow demanded a contribution moratorium against upwards of twenty MEPPs and threatened to file bankruptcy if any one of them assessed withdrawal liability against it. This unprecedented moratorium was extended multiple times at Yellow's request. When Yellow resumed contributing in 2011, it did so at significantly lower rates than in effect prior to the moratorium. To accommodate Yellow's request to pay reduced rates, and consistent with Yellow's agreement with the IBT Negotiating Committee providing for Yellow's re-entry into the plans subject to the approval of each plan,[13] several MEPPs took steps to protect other plan participants from the effects of Yellow's reduced contributions and the absence of any withdrawal liability. *See*, *e.g.*, NETTI Response [Dkt. No. 3058] ¶¶ 8-12, 33; SFA MEPP's MSJ Response [Dkt. No. 3975] ¶¶ 127-129. Western PA Teamsters, for example, codified this agreement in the form of an amendment to its plan documents—a schedule to its Rehabilitation Plan. *See* SFA MEPP's MSJ Response ¶¶ 127-129; *see also* Debtors' Motion ¶ 77 n.13.

25. NETTI did much the same. In allowing Yellow to re-enter the plan—*without* paying withdrawal liability *and* contributing at a quarter of its previous level—NETTI adopted a term providing that in any subsequent withdrawal, Yellow's Annual Payments would not be lower than they would have been if Yellow had withdrawn during its moratorium.[14] This agreement between

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[13] *See* YRC Worldwide Inc., Current Report (Form 8-K), Exhibit 10.1 (Sept. 29, 2010) ("Re-Entry MOU") § 4(a), https://investors.myyellow.com/node/22701/html ("It is understood that pension benefit accrual rates and the other terms and conditions under which the Employer resumes participation shall be determined by each Fund.").

[14] *See* Dexter Decl., Ex. B (NETTI Plan) § 15.06(a)(vi) (for "2008 Suspending Employers," like Yellow, "the amount of each annual payment . . . shall be no less than the amount calculated . . . as if the 2008 Suspending Employer withdrew on the day immediately preceding the day on which the 2008 Suspending Employer resumed contributions to the Fund"; "the highest Contribution Rate shall be computed including the Contribution Rates

NETTI and the Debtors, memorialized in the NETTI Plan, is very similar to the "written agreement" the Debtors now acknowledge they have with the other plans. *Contra* Debtors' Motion at ¶ 77 n.13 ("Debtors would note that, unlike Western PA and New York State Teamsters, with whom Debtors had entered written agreements regarding alternative withdrawal liability calculations, New England Teamsters has identified no such agreements, and the Debtors are aware of none.").

26. It beggars belief that the Debtors were not "aware" of this agreement with NETTI. Yellow acknowledged that each MEPP would determine the conditions of Yellow's re-entry to accommodate its reduced contribution rate.[15] Moreover, in the decade between Yellow's resumption of contributions and its ultimate withdrawal, Yellow never disclaimed the NETTI Plan's method of calculating withdrawal liability. To the contrary, it affirmed the agreement. In executing the Master Freight Agreement ("MFA") in 2019, Yellow confirmed its assent to be bound by the NETTI Plan.[16] And Yellow's internal records reveal that Yellow calculated its estimated withdrawal liability to NETTI consistent with the NETTI Plan.[17]

27. In its September Opinion, the Court declined to entertain the Debtors' argument that PBGC approval was required for plan provisions amending withdrawal liability calculations to be enforceable. *See* Memorandum Opinion at 41 [Dkt. No. 4326]. Changing tack, the Debtors here contend that the PBGC is not permitted to approve this provision at all. *See* Debtors' Motion ¶ 77.

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under the applicable Collective Bargaining Agreement during the period of suspension until resumption of contributions to the Fund").

[15] *See* Re-Entry MOU § 4(a).

[16] *See* Dexter Decl., Ex. C (MFA) Art. 65(b) ("The Employer agrees to and has executed a copy of the New England Teamsters and Trucking Industry Pension Fund Agreement and Declaration of Trust dated April 11, 1958, and accepts such Agreement and Declaration of Trust, as amended. . .").

[17] *See* Dexter Decl., Ex. E; *id.* at Ex. F; *see also id.* at Ex. G (internal Yellow email dated August 19, 2019 distributing "the New England pension fund special withdrawal rule for YRCW"); *id.* at Ex. A, 19:18-23, 22:19-25.

Even if this were true, this elides the fact that an employer and a pension plan may agree to different calculations of withdrawal liability. *See* PBGC Opinion Letter 89-8, 1989 WL 224526 (Oct. 19, 1989) ("The PBGC believes that this statement reflects Congress's intent that an employer may, consistent with the requirements of Title IV of ERISA, contractually waive limitations on its withdrawal liability."); *see also Artistic Carton Co. v. Paper Indus. Union-Management Pension Fund*, 971 F.2d 1346, 1353 (7th Cir. 1992) ("the MPPAA . . . does not forbid employers from agreeing to pay extra money to a pension trust"). As an enforceable agreement exists, it is of no moment whether PBGC approval would be available.

28. The parties' agreement regarding Yellow's withdrawal liability calculation has been in place for more than a decade. It allowed Yellow to avoid bankruptcy, avoid withdrawal liability, and obtain reduced go-forward contribution obligations. These are significant benefits that placed correspondingly significant burdens on NETTI. The Debtors cannot denounce this agreement after enjoying its benefits. *See In re Exide Techs.*, 378 B.R. 762, 767 n.5 (Bankr. D. Del. 2007) (a party is equitably estopped from receiving all the benefits of a bargain and then disclaiming benefits owed to the counterparty when the party's conduct "intentionally or unintentionally leads [the counterparty], in reliance upon that conduct, to change position to his detriment") (quoting *Benitec Australia Ltd. v. Promega Corp.,* No. 04-CV-889, 2005 WL 549552, at *5 (D. Del. Mar. 8, 2005)).

29. Yellow sought and obtained concessions from NETTI; NETTI adopted plan provisions that Yellow accepted in re-entering the plan. Yellow subsequently reaffirmed its consent to NETTI's Plan in its execution of the MFA, and internally projected its withdrawal liability in accordance with NETTI's Plan. Yellow agreed to (and was certainly aware of) the withdrawal liability provisions of NETTI's Plan; the Court has found that similar MEPP plan provisions are

binding on the Debtors. The NETTI Plan, too, is valid and binding on the Debtors, and NETTI's Annual Payment calculations performed in accordance with the NETTI Plan are correct.

CONCLUSION

For the forgoing reasons, the Funds respectfully request the Court deny the Debtors' motion for partial summary judgment other than with respect to the application of the 20-year cap to the Virginia Teamsters' claim.

Dated: November 26, 2024
Wilmington, Delaware

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