

## **FAQs on Possible Frontier Bankruptcy**

Media outlets are reporting that Frontier Communications may file for bankruptcy as early as March 2020. While we don't know anything other than what is being reported in the news media, CWA has put together a brief question and answer piece in an attempt to explain the bankruptcy process and to ease your concerns as CWA represented employees of Frontier. CWA and its bankruptcy attorneys, Cohen, Weiss and Simon LLP ("CWS"), are closely monitoring this situation and will advise you as necessary when circumstances warrant.

### **Brief Background on Bankruptcy Proceedings**

**Question.** What is a bankruptcy?

A bankruptcy is a legal proceeding with a special set of rules governing a company's rights and obligations (as well as the rights and obligations of creditors and other parties) after the company files a bankruptcy petition.

The laws governing a bankruptcy are contained in the U.S. Bankruptcy Code. Bankruptcy proceedings are supervised by the U.S. Bankruptcy Courts. The parties impacted by the bankruptcy filing (for example, Frontier and CWA members) must follow the rules of the bankruptcy court.

**Question.** What are the differences between a Chapter 11 and Chapter 7 bankruptcy?

**Answer.** Chapter 11 filing is a reorganization proceeding that is intended to give a company an opportunity to restructure its operations and finances and emerge from bankruptcy pursuant to a plan of reorganization. In Chapter 11 bankruptcies, companies tend to seek a seamless transition in operations upon a filing so the public does not recognize a break or difference in service. In a Chapter 11 bankruptcy proceeding, a company may attempt to reorganize its operations in a "stand-alone" reorganization or to sell some or most of its assets as a going concern, often referred to as a "Section 363" or "363" sale. A company that has filed a Chapter 11 petition is often referred to as the "debtor" or "debtor-in-possession" ("DIP")

A Chapter 7 filing is a liquidation proceeding where a company terminates operations. A trustee rather than management has ultimate responsibility for administering the company and its liquidation.

**Question.** What are the rights a company obtains when it files for Chapter 11?

**Answer.** The “debtor,” obtains the right to ask the bankruptcy court for the right to sell assets and “reject” otherwise binding contracts. Immediately upon a bankruptcy filing, there is a stop of most creditors’ efforts, known as an “automatic stay,” to collect on their debts and most lawsuits. Debts become what are called bankruptcy “claims.” This process gives the Company a chance to save its cash and restructure or sell assets in an organized way with some “breathing room” from creditors seeking to collect debts and pursue lawsuits.

**Question.** What are exceptions to the automatic stay?

**Answer.** Exceptions to an automatic stay include certain “First Day Orders,” (meaning orders presented at the first court appearance after filing for bankruptcy) which may allow the company to pay various prepetition bankruptcy “claims” as they come due instead of waiting for the end of the case. There is usually a First Day Wage and Benefit Order authorizing the payment of most employee-related obligations earned before the bankruptcy filing.

While most litigation is placed on hold, grievance and arbitration proceedings under a CBA may go forward, although any monetary damages (for example, back pay) are usually dealt with in the bankruptcy process, and most government regulatory proceedings (like the Labor Board) go forward.

**Question.** What happens in the Chapter 11 bankruptcy process?

**Answer.** When a company files a petition for Chapter 11, the automatic stay takes effect and the company immediately comes under the supervision of the Bankruptcy Court. The Company must file motions and seek the approval of the Bankruptcy Court to take any actions that would be different from their “ordinary course of

business.” CWA would have the right to weigh in on any motions filed by Frontier

The company ultimately negotiates a Plan of Reorganization (“POR”) with creditors and other involved parties in the bankruptcy. The POR is a legal document that provides how the company will pay creditors and how it will be governed following emergence from bankruptcy.

**Question.** What happens to a union contract during bankruptcy?

**Answer.** There is a complex process under Section 1113 of the Bankruptcy Code that would govern any motion “to reject” a labor contract, and to the extent it ever becomes relevant we will report further on Section 1113.

Under bankruptcy, the company can ask the bankruptcy court for the authority to reject otherwise binding contracts, including collectively bargained agreements, but must engage in a period of bargaining when seeking to reject a labor contract. The union would have an opportunity to argue against rejection and present evidence in a trial in the bankruptcy court.

In the case where the CBA is rejected, a company’s last bargaining offer would be implemented as terms and conditions of employment, but generally, unions would then have the right to strike. The company would ultimately be required to bargain over the terms of a new contract. In this case, since CWA has multiple CBAs with Frontier, the company could chose to seek rejection of individual contracts or all of the contracts with CWA. Thus, Frontier could chose to seek to reject just a particular local contract but we are not aware of such approach in past cases because in the context of multiple contracts with locals of the same international, usually each contract has the same type of provision that the company wants to change across the board. If considering seeking rejection of a labor contract, a company usually wants some type of coordinated bargaining with the international involved.

Companies in bankruptcy often have good reason to avoid re-opening bargaining. Companies under Chapter 11 typically seek to

maintain operations and avoid disruptions during bankruptcy while they secure funding and seek an exit out of bankruptcy.

**Question.** How is the Plan of Reorganization approved?

**Answer.** The company's management has the exclusive right to file a POR for the first 120 days after filing the bankruptcy petition, although the bankruptcy court may shorten or extend that time period.

Before a POR may take effect, it must be approved by the bankruptcy court and be approved by a vote of various classes of creditors.

**Question.** How does a company fund its operations while in bankruptcy?

**Answer.** A debtor often seeks new financing, called Debtor In Possession ("DIP") Financing, to pay for the operating needs of the company.

**Question.** What is the role of the bankruptcy judge?

**Answer.** The judge oversees the bankruptcy legal process and must review the debtor's decisions, including any requests for confirming a POR, rejecting contracts, or selling substantial assets. The judge is required to follow and implement the bankruptcy law. Bankruptcy Judges do not manage or administer the business of the Company in bankruptcy. They only interpret the bankruptcy law in relation to the motions brought before them.

**Question.** Who else is involved in a company's bankruptcy filing?

**Answer.** The "unsecured creditors" (creditors who are owed money but do not have a lien or mortgage on the Company's property to secure the debt) usually have a formal role in a Chapter 11 bankruptcy.

An official body called the Unsecured Creditors' Committee ("Committee"), usually consisting of the seven largest unsecured creditors, is appointed by the United States Trustee, a government official, to represent the interests of unsecured creditors. As a group, the Committee monitors the bankruptcy proceedings, appears in court to present the views of the Committee, negotiates over a plan of reorganization, and can conduct investigate the Company's actions.

In the event Frontier does file for bankruptcy, CWA will attempt to be appointed a member of the Unsecured Creditors Committee appointed in the Frontier case. CWA and its professionals — including our bankruptcy attorneys, CWS — would be monitoring all of the court proceedings.

### **Questions Related to Bargaining/Pay/Pensions/Benefits**

**Question.** What happens if Frontier declares bankruptcy before or during bargaining?

**Answer.** There is no change to the rules under which unions and employers negotiate new agreements when the employer is in bankruptcy, unless and until the Company invokes an attempt to reject the labor contract.

**Question.** Will CWA and Frontier bargain expiring contracts during the bankruptcy proceeding?

**Answer.** Yes.

**Question.** How will an employee's pay and benefits be impacted by the Bankruptcy?

**Answer.** Assuming Frontier files first day motions to continue to run the business in the normal course, all employees should expect to receive their usual pay and benefits during the bankruptcy proceedings. The CBAs remain in effect unless and until the Court approves any changes to them.

**Question.** Does Frontier's bankruptcy filing terminate the pension plan?

**Answer.** No. While underfunded pension plans sometimes terminate during bankruptcy proceedings, a company's bankruptcy filing by itself does not terminate a pension plan.

**Question.** How would bankruptcy affect my pension plan?

**Benefits Already Earned:** Generally, all earned benefits under a traditional, defined-benefit pension are protected under federal law and must be paid in full.

However, an employer can apply for a distressed termination under the Pension Benefit Guarantee Corporation (“PBGC”) if:

1. The pension plan does not contain enough assets to pay benefits, and
2. The employer proves that it cannot remain in business while maintaining operation of the plan.

Under a distressed termination, the PBGC takes over the administration of the plan and pays all benefits up to a maximum guaranteed amount. If a labor contract requires contributions to a defined benefit pension plan, the Company would also have to seek relief from the labor contract in order to terminate a pension plan.

It’s important to remember that Federal law requires that money contributed towards financing a pension plan be kept in a trust separate from other business assets. These trust assets may not be used to pay off other debts in the bankruptcy process.

**PBGC 2020 Maximum Monthly Guarantees for Single Employer Plans**

Age at Retirement	Monthly Guaranteed Amount (Straight-Life Annuity)
55	\$2,615.63
60	\$3,778.13
65	\$5,812.50
70	\$9,648.75

Under federal law, lump sum payments generally are not available when a company files for bankruptcy and the plan is not 100% funded. It is rare for a plan to be 100% funded and the most recent disclosures from the company indicate that the Frontier plan is funded at 92.91 percent. Pension plans that are terminated and then administered by the PBGC, likewise will not offer lump sum distributions to retirees. PBGC plans do offer joint-and-survivor annuity options.

It has been our experience that these PBGC guaranteed amounts cover earned benefits for most CWA members, depending on their age at retirement.

**Future Benefits:** Filing for bankruptcy does not necessarily mean a change to your future benefits under the pension plan.

Under Chapter 11 bankruptcy, a company may or may not seek changes to the pension plan (or any other employee benefit plan) during the bankruptcy. Employers are required to negotiate with represented units for any changes to active benefit plans, either under the normal rules of bargaining or the rules governing attempts to reject a collective bargaining agreement.

**Question.** What is the Pension Benefit Guaranty Corporation (“PBGC”)?

**Answer.** The PBGC is a federal agency created by the Employee Retirement Income Security Act of 1974 (ERISA) to protect pension benefits in private sector defined benefit plans — the kind that typically pay a set monthly amount at retirement. The PBGC receives no taxpayer dollars. Instead, its operations are financed by insurance premiums, investment income and assets and recoveries from failed single-employer plans.

**Question.** What happens when a pension plan is terminated and transferred to PBGC?

**Answer.** When an underfunded pension plan is terminated and transferred to PBGC, it will notify plan participants and beneficiaries and provide information about their plan and about PBGC. While we do not know for sure, we have no basis to conclude that the Frontier pension plan will be terminated during the bankruptcy.

If the pension plan is insured by the PBGC and it is terminated without sufficient money to pay all benefits, PBGC’s insurance program will pay you the benefit provided by your pension plan up to the limits set by law and subject to any other legal requirement, as set forth above.

If you have not yet retired, your payments will begin when you become eligible and apply for pension benefits.

**Question.** Are Frontier's pension plans insured by PBGC?

**Answer.** Yes.

Frontier may have an option to amend the pension plan after bankruptcy to permit individuals to reapply for their lump sums. CWA is continuing to analyze all options that may be available.

**Question.** Will a plan termination affect annuity payments?

**Answer.** No. The termination of the pension plans does not affect purchased annuities. The annuities will continue to be paid by the insurance company who is responsible for those benefits.

**Question.** Will retired employees continue to receive their monthly pension?

**Answer.** As of today, the union pension plan remains intact and, therefore, retired employees will continue to receive monthly annuity payments.

**Question.** What will happen to our other benefits, including insurance?

**Answer.** At this time, all terms of the CBA remain in effect. Thus, to the extent any insurance plan or other benefit is a benefit set forth in the CBA, the benefit remains in effect.

If it files for Chapter 11 bankruptcy, Frontier does have the ability to request changes to the CBA, but until and unless it makes any such request to the bankruptcy court, and the request is granted, there will be no changes to any benefits.

**Question.** Should you file a claim for monetary damages if you believe you are owed funds?

**Answer.** At this time there is no need to file a claim for monetary damages against Frontier. If Frontier does indeed file for bankruptcy, the bankruptcy court will set a deadline for filing claims, called a "bar date," and instructions and probably forms will be distributed. We expect that the CWA will file claims on its behalf as its members, including grievances, but will provide more information if there is a bankruptcy and when a bar date is set.



**Question.** Whom should participants call with additional questions about their pension benefits?

**Answer.** The PBGC's customer contact number is (800) 400-7242. Customer Service is open between 8am and 7pm Monday - Friday, except holidays.

There may also be a number at the pension plan.

As you can see, CWA and its bankruptcy attorneys and other professionals with bankruptcy experience and expertise are monitoring all developments related to Frontier and will advise you of future developments.