# Multiple Claims Toward a Single Satisfaction: Interpreting the "Single Satisfaction" Rule with Respect to Bankruptcy Claims

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It is a general rule of law and equity that a claimant is entitled to recover only once on account of a claim. Under this rule, often referred to as the "single satisfaction" rule, a claimant that is satisfied with respect to all of its losses cannot assert a second claim for those same losses. While the "single satisfaction" rule appears simple to apply, it can become complex in the context of determining bankruptcy claims.

In a recent decision by the Second Circuit Court of Appeals in the *Delta Air Lines* case,[1] the Court considered Delta's assertion that certain claims of Owner Participants under Tax Indemnity Agreements related to aircraft leases should be disallowed under a "single satisfaction" argument. Delta had asserted that disallowance was appropriate because the same losses claimed by the Owner Participants had been satisfied through the discharge of overlapping claims asserted by Indenture Trustees acting for the Owner Participants under the aircraft leases. The Second Circuit, however, allowed the Owner Participants' claims. The Court held that because the Owner Participants were not actually paid in full for their losses—the Indenture Trustees' overlapping claims were discharged in the bankruptcy without being paid in full—the Owner Participants' seemingly duplicative claims under the Tax Indemnity Agreements should survive. While the result of its decision could be viewed as essentially a "double" bankruptcy dividend with respect to the aircraft leases, the Second Circuit was comfortable with this outcome, because it was consistent with the contractual language agreed upon by the parties and because it still left the claimants with less than 100% recovery on their losses, therefore not violating "single" satisfaction principles.

In this respect, the *Delta* decision is not unique. As described below, other bankruptcy decisions also demonstrate that the road toward maximizing the return on a claim in bankruptcy may sometimes be best traveled through the pursuit of multiple claims.

## ***Delta Air Lines*: Two Claims Are Better Than One**

On June 22, 2010, the Second Circuit held that equity owners, or Owner Participants, in leveraged leases of Delta aircraft were permitted, under the terms of tax indemnity agreements with Delta, to assert claims for tax losses incurred when Indenture Trustees foreclosed on the aircraft subject to leveraged leases. The Second Circuit's decision reversed the District Court's affirmation of a prior Bankruptcy Court decision upholding Delta's objections and disallowing the Owner Participants' tax indemnity claims.

By way of background, leveraged leases often are used by airlines to fund the acquisition of aircraft. Under these financing structures, an Owner Trust purchases aircraft with a combination of (a) funds provided as equity by Owner Participants who are beneficiaries of the Owner Trust, and (b) funds provided as non-recourse debt by Lenders represented by an Indenture Trustee. The Owner Trust then leases the aircraft to the airline, giving the Lenders a cash return and leaving for the Owner Participants the right to take accelerated depreciation deductions for the aircraft under the U.S. Internal Revenue Code. The Owner Trust typically grants a security interest in the aircraft and assigns its interest in the lease and all remedies under the lease to the Indenture Trustee, as collateral for the loans made by the Lenders.

Under these arrangements, two mechanisms are employed to protect the Owner Participant's tax benefit. First, the Owner Participant enters into a Tax Indemnity Agreement (a "TIA") directly with the airline, under which the airline is required to compensate the Owner Participant for any deductions it was forced to "recapture" due to a foreclosure on the aircraft by the Indenture Trustee following a default by the airline under the leveraged lease. Second, the leveraged lease itself includes a provision that permits the Indenture Trustee to recover a "stipulated loss value" ("SLV") in the event that the airline defaults on the lease. The Indenture Trustee is required by contract to apply the SLV payment first to the remaining amounts owing to the Lenders, and then to the Owner Participants in compensation of losses for lost tax deductions. Because these two mechanisms may both compensate an Owner Participant for the same lost tax deductions, a TIA will typically contain an exclusionary provision that prevents an Owner Participant from collecting under the TIA if and to the extent that the airline makes the SLV payment.

On September 14, 2005, Delta filed its Chapter 11 petition, thereby triggering an event of default under the terms of leveraged leases it held with a variety of Owner Trusts. The applicable Indenture Trustees exercised the remedies provided to them under the leases, foreclosing on various aircraft and either selling the aircraft to third parties or re-leasing the aircraft back to Delta. In the case of third-party sales, the Indenture Trustees obtained deficiency claims equal to the SLV less the amount of the sale proceeds; in the case of the re-leasing to Delta, the Indenture Trustees obtained deficiency claims equal to the SLV less a negotiated damages mitigation amount. As a matter of tax law, the foreclosures by the Indenture Trustees forced the Owner Participants to recapture deductions for accelerated depreciation that were covered by the TIA, resulting in tax losses. The Owner Participants filed claims for these tax losses under the terms of their TIAs.

Delta objected to the Owner Participants' claims under the TIAs, arguing, among other things, that the TIA claims were duplicative of the claims of the Indenture Trustees for SLV, and that the discharge of the Indenture Trustees' SLV claims in the bankruptcy would trigger the exclusionary provisions in the TIAs and therefore eliminate the TIA claims of the Owner Participants. The

Bankruptcy Court and District Court agreed with Delta and disallowed the TIA claims.[2]

Rejecting the reasoning of the lower courts, the Second Circuit held that the Owner Participants were permitted to bring their claims for tax losses under their TIAs because to hold otherwise would undermine the purpose of the TIAs and defeat the intentions of the parties in entering into such agreements. According to the Court, "[t]he purpose of each TIA was to compensate the Owner Participant in the event that it was required to recapture accelerated depreciation it had taken." Furthermore, "[t]he purpose of the exclusionary provisions [within the TIAs] was simply to ensure that an Owner Participant not receive *double* compensation for depreciation recapture." The Court reasoned that double recovery was very unlikely, even if both the SLV claims and the TIA claims survived. Since an Owner Participant would only receive a portion of any SLV *after* the Lenders were paid in full, and since the Lenders would not be paid in full from the distribution on account of the SLV claim, the Owner Participants' only actual monetary recovery for the lost tax deductions would be through the TIA claim.

The Court focused heavily on the intentions of the parties and concluded that the ultimate purpose of the TIAs was to secure the tax benefits of the leveraged leases for the Owner Participants. According to the Court, "[i]t cannot possibly be that the parties understood that those benefits could be eliminated as the result of any payment to the Indenture Trustee, so long as it was determined by reference to SLV, notwithstanding that such payment would in no way benefit the Owner Participant." Ultimately, the Court was not persuaded by Delta's argument that "a single loss can only give rise to a single claim in bankruptcy," and explained, "[i]f Delta has contracted to pay duplicative claims, then it must pay both—it cannot repudiate its duty to party A under contract A by asserting that it contracted to pay the same amount to party B under contract B."[3]

**_Ivanhoe_ and _NEGT_: Two Obligors Are Better Than One**

Although the Second Circuit did not expressly make the connection, the *Delta* decision has roots in long-standing Supreme Court precedent. In its decision in *Ivanhoe Building & Loan Ass'n of Newark, N.J. v. Orr*, 295 U.S. 243 (1935), the Supreme Court held that a creditor was permitted to assert the full amount of its claim against a debtor even though it had already foreclosed upon the third-party collateral securing the debt. Rather than reduce the creditor's claim by the amount received through foreclosure, and cause the creditor to obtain a smaller distribution from the debtor's estate, the Court concluded that the creditor could pursue its full claim against the debtor, with the caveat that the creditor could not receive more than 100% of its claim from all involved parties.

The *Ivanhoe* decision has been applied in more recent bankruptcy cases to permit a similar result. For example, in *In re National Energy & Gas Transmission, Inc.*, 492 F.3d 297 (4th Cir. 2007), the Chapter 11 debtor, National Energy & Gas Transmission Energy Trading Power, L.P. ("ET"), an energy trading company, entered into an Electricity Tolling Agreement with Liberty Electric Power, LLC ("Liberty"). To protect its interests under the Tolling Agreement, Liberty acquired two guarantees:

one from ET's parent company (also a debtor), National Energy & Gas Transmission, Inc. ("NEGT"); and one from Gas Transmission Northwest Corporation ("GTN"), a non-debtor subsidiary of NEGT. Each guarantor's maximum liability was $140 million.

The Bankruptcy Court approved the debtors' motion to reject the Tolling Agreement, which caused Liberty to seek $140 million as a termination payment. Under the terms of the Tolling Agreement, the debtors and Liberty entered into an arbitration, and Liberty was ultimately awarded $140 million plus $17 million in interest, for a total of $157 million. The debtors and GTN agreed that GTN would pay Liberty the full $140 million owing under GTN's guarantee, and, upon receipt of the $140 million from GTN, Liberty first applied that payment to the $17 million interest and then to $123 million in principal. This application satisfied the interest claim in full but left an alleged $17 million deficiency in principal.

Liberty also continued to pursue its claims against NEGT and ET in their bankruptcy cases, for the full $140 million owing by the debtors under the Tolling Agreement. The debtors objected to Liberty's claims arguing that 1) Liberty was essentially seeking to collect $17 million in post-petition interest, even though Liberty was labeling the claim as one for principal, and 2) Liberty should not be able to pursue a claim for the full amount owed, but rather only for $17 million, when it had already been paid $140 million by the guarantor and was only owed, at most, $17 million by the debtors. The difference between a $140 million claim and a $17 million claim was material, because even in a 10% distribution case, such a difference would create a $12.3 million gap in recovery, and even the $140 million claim would not result in full payment of the $17 million deficiency.

Applying the Supreme Court's decision in *Ivanhoe*, the Fourth Circuit concluded that GTN's guarantee payment did not reduce the total amount of debt owed to Liberty by ET. Additionally, the Court went on to explain that, under New York law (which governed the Tolling Agreement), GTN was a surety for ET, not a co-obligor, and as such, the guarantee from GTN did not reduce ET's debt to Liberty. Accordingly, the full $140 million claim was the proper starting place for Liberty's claim. The Fourth Circuit, however, did not end its decision there. The court ultimately held that 11 U.S.C. § 502(b)(2) prevented Liberty from collecting any portion of the $17 million it claimed as unpaid principal, because the amount was properly considered to be disallowed post-petition interest. Accordingly, no portion of the $140 million claim was actually recoverable by Liberty.[4]

**Multi-Debtor Bankruptcies: When Two Claims Are Against Two Debtors**

While these issues regarding multiple claims can create complexities in cases involving debtor obligors and non-debtor guarantors, they can create even greater complexities in cases where all obligors and guarantors are debtors and in the same corporate family. Consider, for example, a situation in which a $100 million loan to a borrower is guaranteed by two of the borrower's affiliates, where the borrower and the two affiliates all become debtors. If the three debtors are paying creditors distributions of 25%, 50%, and 75%, respectively, then the creditor's three allowed $100 million claims would produce distributions totaling $150 million. This recovery level, of course, would be prohibited by the single satisfaction rule, which would limit the aggregate distributions to

$100 million.

But which debtors should pay which portion of the $100 million? Can the creditor proceed against the 25% and 50% debtors first, leaving the 75% debtor, which is presumably the most financially capable, to pay only $25 million? While one logical answer might be to require the creditor to look to the borrower first, then to the guarantors, this would not necessarily respect the rights of the creditor under the guarantees, and the order of liability among guarantors would remain unclear.

While some commentators have argued that substantive consolidation of the debtors' estates would be a good solution to this issue,[5] such a substantive consolidation may not be appropriate on the basis of the affiliate guarantees alone. For example, for a court following the Third Circuit's substantive consolidation logic in *Owens Corning*,[6] the affiliate guarantees may be evidence against consolidation, on the basis that the creditor obtaining the guarantees was specifically contracting for, and relying on, the separate credit of each obligor.

This emphasis on contractual expectations connects *Owens Corning* to *Delta*—in each case, the court discussed how its decision gives effect to the pre-petition contracts entered into by the debtors, and held that the debtors could not use equitable bankruptcy principles to disavow their contractual obligations to certain creditors, even where that disavowal would tend to maximize distributions to other creditors.

**The Bottom Line**

Although the "single satisfaction" rule is alive and well in bankruptcy, its application may be more complex than outside of bankruptcy. While principles of fairness will prevent more than 100% payment to a creditor in bankruptcy, a creditor may be able to assert multiple claims as a means to obtaining closer to 100% payment than it might otherwise receive. Creditors with potential multiple claims, other creditors who may be diluted by those multiple claims, and debtors should pay close attention to the assertion of multiple claims toward a single satisfaction to protect their respective interests.

[1] *In re Delta Air Lines, Inc.*, 608 F.3d 139 (2d Cir. 2010).

[2] *In re Delta Air Lines, Inc.*, 381 B.R. 57 (Bankr. S.D.N.Y. 2008), *aff'd*, 2008 WL 4444001 (S.D.N.Y.).

[3] The Second Circuit also considered carefully the distinctions between three formulations of the exclusionary provisions of three separate TIAs. While the three formulations represented a range of "easier" and "more difficult" decisions, the Court found that all three formulations permitted the Owner Participants' claims under the TIAs.

[4] While the "multiple claims" portion of the *NEGT* decision could be viewed as *dicta*, given the Fourth Circuit's independent holding on Section 502(b)(2) grounds, the decision is notable nevertheless for its application of the *Ivanhoe* precedent in the context of a modern bankruptcy case.

[5] This situation is described in some detail by Daniel J. Bussel in his recent article in the American

Bankruptcy Institute Law Review, "*Multiple Claims, Ivanhoe and Substantive Consolidation*," Vol. 17, No. 2 (Winter 2009).

[6]*In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005).

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