Legal Update Article

Withdrawal Liability: Third Circuit Paves New Path for Pension Funds to Collect from Affiliated Employers

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Takeaways

- The Third Circuit recently held in *Laguna Dairy* that, under certain circumstances, a settlement agreement over a withdrawal liability dispute can constitute a revised withdrawal liability assessment under ERISA.
- Employers should be mindful that all trades or businesses under common control are treated as a single employer and are jointly and severally liable for withdrawal liability under ERISA.
- Withdrawal liability under ERISA is an evolving area of law, and some courts are willing to broadly construe the statutory language in favor of multiemployer pension plans.

Related link

- *Central States, Southeast & Southwest Areas Pension Fund v. Laguna Dairy, S. de R.L. de C.V., et al.* (opinion)

Article

Holding a settlement agreement was a revised withdrawal liability assessment, the U.S. Court of Appeals for the Third Circuit rejected a group of dairy companies' petition to dismiss a pension fund's claim to enforce a $39 million withdrawal liability in *Central States, Southeast & Southwest Areas Pension Fund v. Laguna Dairy, S. de R.L. de C.V., et al.*, No. 23-3206 (Mar. 27, 2025).

Withdrawal Liability

Created in 1980 with the enactment of the Multiemployer Pension Plan Amendments Act (MPPAA) under ERISA, withdrawal liability is a statutory exit fee imposed on employers whose obligation to contribute to union pension funds (called multiemployer pension plans) ceases in whole or part. Because MPPAA is a remedial statute, courts have often construed it liberally in favor of protecting the participants in multiemployer pension plans. Indeed, the statute is dramatically skewed in favor of pension funds. Entities that are under common control are treated as a single employer and are jointly and severally liable for withdrawal liability under ERISA.

Under Section 1401(b) of MPPAA, a pension fund may bring a collection claim for withdrawal liability against an employer in federal court:

1. "[I]f no arbitration proceeding has been initiated" to collect withdrawal liability; or
2. To "enforce, vacate, or modify [an] arbitrator's award" after "completion of the arbitration proceedings."

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Background

Laguna Dairy involved a group of affiliated dairy companies; one of the companies, Borden, had a collective bargaining relationship with a Teamsters union, which required Borden to contribute to Central States, Southeast and Southwest Areas Pension Fund. In 2015, the Fund sought withdrawal liability from Borden. Although Borden disputed the Fund's withdrawal liability assessment and initiated arbitration, the parties ultimately entered into a settlement agreement in 2016. In 2020, Borden petitioned for bankruptcy, which caused the Fund to seek payment of Borden's outstanding withdrawal liability from the other affiliated dairy companies. When the affiliates failed to respond, the Fund sued the affiliated dairy companies to enforce the settlement agreement.

Dismissing the claim, the District Court of Delaware ruled MPPAA does not provide a statutory cause of action to enforce a private settlement agreement. It reasoned that Borden had initiated arbitration and arbitration was not yet complete due to the parties' settlement. The Fund appealed to the Third Circuit.

Third Circuit Decision

In a 2-1 decision, the Third Circuit determined:

1. The settlement agreement constituted a "revised" assessment for withdrawal liability;
2. The Fund's letters to the affiliated companies constituted a new demand for withdrawal liability; and
3. Since the affiliated dairy companies did not arbitrate the revised assessment and demand for withdrawal liability, the Fund could bring an action to enforce the settlement agreement.

The Third Circuit found this result was consistent with MPPAA's underlying purpose to protect union pension plans and their beneficiaries. It held that a pension fund may revise a withdrawal liability assessment "so long as the employer is not prejudiced and the revision was made in good faith."

Circuit Judge Stephanos Bibas dissented from the majority, arguing that the plain language of Section 1401(b) of MPPAA only allows a pension fund to bring a collection claim in federal court in two situations. He said the majority's holding violated this clear language by creating an additional, and impermissible, third path for pension funds to bring a claim in federal court.

On April 10, the affiliated companies petitioned for a rehearing *en banc.* They argued that the Third Circuit's decision contradicted the plain language of MPPAA and conflicted with *Allied Painting & Decorating, Inc. v. International Painters & Allied Trades Industry Pension Fund,* 107 F.4th 190 (2024), where the Third Circuit held that a pension fund must abide by MPPAA's "independent statutory requirement" to demand withdrawal liability "as soon as practicable" before bringing a collection claim in federal court. *Allied* also rejected the pension fund's claim that it did not have to demand payment for withdrawal liability "as soon as practicable" if the delay in demanding payment did not prejudice the employer. On April 28, the Third Circuit denied the petition for rehearing, solidifying its decision to create a new path for pension funds to bring a claim to collect withdrawal liability in federal court.

Employer Takeaways

Laguna Dairy provides an example of the complexity of the law in this area and further

demonstrates some of the challenges that employers can face in handling withdrawal liability claims. It also emphasizes courts' willingness to broadly construe the statutory language under ERISA to protect multiemployer pension plans.

If you have any questions regarding withdrawal liability, please contact the authors.